Senate Daily Reader

Friday, January 29, 1999

Bills Included				
HB 1024	HB 1047	HB 1049	HB 1050	SB 55
SB 64	SB 92	SB 111	SB 126	SB 128

State of South Dakota

SEVENTY-FOURTH SESSION LEGISLATIVE ASSEMBLY, 1999

400C0233

HOUSE ENGROSSED NO. HB1024 - 1/25/99

Introduced by: The Committee on Commerce at the request of the Department of Labor

- FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the minimum wage to be paid persons under twenty years of age.

 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
- 4 Section 1. That § 60-11-3 be amended to read as follows:
- 5 60-11-3. Every employer shall pay to each employee who has reached the age of eighteen
- 6 years, wages at a rate of not less than five dollars and fifteen cents an hour. Violation of this
- 7 section is a Class 2 misdemeanor.
- 8 The provisions of this section do not apply to <u>certain employees being paid an opportunity</u>
- 9 <u>wage pursuant to section 2 of this Act,</u> babysitters, or outside salesmen.
- Section 2. That § 60-11-4.1 be amended to read as follows:
- 11 60-11-4.1. Any employee who is eighteen or nineteen <u>under twenty</u> years of age may be paid
- 12 an opportunity wage as defined in section 6 of the Fair Labor Standards Amendments of 1996
- 13 as of October 1, 1996.
- Section 3. That § 60-12-3 be amended to read as follows:
- 15 60-12-3. No child under sixteen years of age may be employed at any time in any occupation
- dangerous to life, health, or morals, nor may any child be in any manner exploited by any

- 2 -HB 1024

1 employer, including for anyone under eighteen years of age the imposition of wages at a rate less 2 than seventy-five percent of the minimum wage. However, it is permissible to employ children 3 over fourteen years of age to dispense gasoline, gasohol, diesel fuel, and oil at gasoline service 4 establishments. Violation of this section is a Class 2 misdemeanor. This section does not apply 5 to minors employed by their parents or to minors who have successfully completed a safety 6 course and received a license, permit, or certificate from a state or federal agency to operate 7 agricultural equipment or otherwise to be employed in any occupation in an agricultural 8

occupation within the scope of the license, permit, or certificate.

- 3 - HB 1024

1 **BILL HISTORY**

- 2 1/12/99 First read in House and referred to Commerce. H.J. 36
- 3 1/21/99 Scheduled for Committee hearing on this date.
- 4 1/21/99 Commerce Do Pass, Passed, AYES 13, NAYS 0. H.J. 104
- 5 1/21/99 Commerce Place on Consent Calendar.
- 6 1/22/99 Second reading of consent calendar items.
- 7 1/25/99 Motion to Amend, Passed. H.J. 180

State of South Dakota

SEVENTY-FOURTH SESSION LEGISLATIVE ASSEMBLY, 1999

400C0213

HOUSE COMMERCE COMMITTEE ENGROSSED NO. **HB1047** - 1/20/99

Introduced by: The Committee on Commerce at the request of the Department of Commerce and Regulation

1	FOR AN	ACT ENTITLED, An Act to grant state-chartered banks powers allowed federally
2	charte	ered banks under certain conditions.
3	BE IT E	NACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
4	Section	on 1. That chapter 51A-2 be amended by adding thereto a NEW SECTION to read as
5	follows:	
6	Notw	rithstanding any restrictions, limitations, and requirements of law, in addition to all
7	powers, e	expressed or implied, that a state bank has under the laws of this state, a state bank shall
8	have the 1	powers and authorities conferred as of January 1, 1999, upon federally chartered banks
9	doing bus	siness in this state. A state bank may exercise the powers and authorities conferred on
10	a federal	ly chartered bank after this date only if the director finds that the exercise of such
11	powers a	nd authorities:
12	(1)	Serves the convenience and advantage of depositors, borrowers, or the general public;
13		and
14	(2)	Maintains the fairness of competition and parity between state chartered and federally
15		chartered banks.
16	If the	director finds that the before-mentioned conditions have been met, the director shall

- 2 -HB 1047

- 1 make a declaratory ruling allowing state banks the same powers and authorities.
- 2 As used in this section, powers and authorities, include, without limitation, powers and
- 3 authorities in corporate governance and operational matters.
- 4 Section 2. That chapter 51A-2 be amended by adding thereto a NEW SECTION to read as
- 5 follows:

17

18

- 6 The restrictions, limitations, and requirements applicable to specific powers or authorities of
- 7 federally chartered banks apply to state banks exercising those powers or authorities permitted
- 8 under section 1 of this Act but only insofar as the restrictions, limitations, and requirements relate
- 9 to exercising the powers or authorities granted banks solely under section 1 of this Act.
- 10 Section 3. That § 51A-2-14 be amended to read as follows:
- 11 51A-2-14. The commission may adopt rules under its jurisdiction:
- 12 (1) To authorize banks to participate in any public agency hereafter created under the 13 laws of this state or the United States, the purpose of which is to afford advantages 14 or safeguards to banks or to depositors, and to comply with all requirements and 15 conditions imposed upon such participants;
- 16 (2) To allow state banks to engage in any banking activity, not prohibited by state law, in which national banks are, as the date of the adoption of the rule, authorized to engage;
- 19 (3) To allow banks to engage in any other banking or nonbanking activities, not 20 prohibited by state law, which the commission deems appropriate; and
- 21 (4) To authorize banks to use new or different forms of accepting deposits, making loans, 22 transferring funds, offering services and such other subjects as it deems appropriate.
- 23 In adopting rules pursuant to this section, the commission shall adopt only such rules that,
- 24 in the opinion of the commission, promote competitive equality between state chartered banks,
- 25 national banks and other financial institutions.

- 3 - HB 1047

1 **BILL HISTORY**

- 2 1/12/99 First read in House and referred to Commerce. H.J. 40
- 3 1/19/99 Scheduled for Committee hearing on this date.
- 4 1/19/99 Commerce Do Pass Amended, Passed, AYES 12, NAYS 0. H.J. 81
- 5 2/19/99 Scheduled for Committee hearing on this date.

State of South Dakota

SEVENTY-FOURTH SESSION LEGISLATIVE ASSEMBLY, 1999

400C0254

HOUSE COMMERCE COMMITTEE ENGROSSED NO. **HB1049** - 1/20/99

Introduced by: The Committee on Commerce at the request of the Department of Commerce and Regulation

- 1 FOR AN ACT ENTITLED, An Act to require certain specifications and tolerances for weights
- and measures established by administrative rule to be in conformance with updated national
- 3 standards.
- 4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
- 5 Section 1. That § 37-21-6 be amended to read as follows:
- 6 37-21-6. Regulations pursuant to § 37-21-5 may include specifications and tolerances for any
- 7 weight, measure or weighing or measuring device of the character of those specified in
- 8 § 37-21-9. The rules shall prohibit the use of any weight, measure or weighing or measuring
- 9 device which is not accurate, which is of such construction that it is not reasonably permanent
- in its adjustment, which will not repeat its indications correctly or which facilitates the
- perpetration of fraud. Such specifications and tolerances shall be in conformity with the code of
- specifications, tolerances and regulations for commercial weighing and measuring devices issued
- and recommended by the National Institute of Standards and Technology of the United States
- Department of Commerce and in effect on July January 1, 1992 1999.

- 2 - HB 1049

1 **BILL HISTORY**

- 2 1/12/99 First read in House and referred to Commerce. H.J. 41
- 3 1/19/99 Scheduled for Committee hearing on this date.
- 4 1/19/99 Commerce Do Pass, Passed, AYES 12, NAYS 0.
- 5 1/19/99 Commerce Place on Consent Calendar.
- 6 1/19/99 Commerce Reconsidered, AYES 12, NAYS 0.
- 7 1/19/99 Commerce Do Pass Amended, Passed, AYES 12, NAYS 0. H.J. 81
- 8 1/19/99 Commerce Place on Consent Calendar.
- 9 1/19/99 Commerce Do Pass, Passed, AYES 12, NAYS 0.

State of South Dakota

SEVENTY-FOURTH SESSION LEGISLATIVE ASSEMBLY, 1999

400C0221

HOUSE COMMERCE COMMITTEE ENGROSSED NO. HB1050 - 1/22/99

Introduced by: The Committee on Commerce at the request of the Department of Commerce and Regulation

- 1 FOR AN ACT ENTITLED, An Act to revise the term, creditable coverage, with regard to
- 2 health insurance policies and to clarify coverage for guarantee issue.
- 3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
- 4 Section 1. That § 58-17-69 be amended to read as follows:
- 5 58-17-69. For purposes of §§ 58-17-66 to 58-17-87, inclusive, the term, creditable coverage,
- 6 means benefits or coverage provided under:
- 7 (1) An employer-based health insurance or health benefit arrangement that provides 8 benefits similar to or exceeding benefits provided under the basic health benefit plan 9 or an employee welfare benefit plan as defined in section 3(1) of the Employee 10 Retirement Income Security Act of 1974 as adopted by the director pursuant to 11 chapter 1-26, to the extent that the plan provides directly or through insurance, 12 reimbursement or otherwise to employees or their dependents medical care for the 13 diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for 14 the purpose of affecting any structure or function of the body and amounts paid for 15 the transportation primarily for and essential to medical care;
 - (2) An individual health benefit plan, including coverage issued by any health maintenance

16

- 2 - HB 1050

organization or pre-paid hospital or medical services plan that provides benefits similar to or exceeding the benefits provided under the basic health benefit plan as approved pursuant to § 58-18B-32, but excluding limited benefit plans and dread

- 4 disease plans;
- 5 (3) Medicare or medicaid;
- 6 (4) Chapter 55 of Title 10, United States Code;
- 7 (5) A medical care program of the Indian Health Service or of a tribal organization;
- 8 (6) A state health benefits risk pool;
- 9 (7) A health plan offered under Chapter 89 of Title 5, United States Code;
- 10 (8) A public health plan;
- 11 (9) A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. 2504(e));
- 12 (10) A church plan; or
- 13 (11) A college plan; or

25

- 14 (12) A short term or limited duration plan.
- 15 Section 2. That § 58-17-85 be amended to read as follows:
- 16 58-17-85. If a person has an aggregate of at least twelve months of creditable coverage, the 17 carrier shall accept such person for coverage under a health benefit plan, which contains benefits 18 which are equal to or exceed the benefits contained in the basic plan that was approved pursuant 19 to § 58-18B-32 and the maximum lifetime maximum benefit of the coverage is not less than one 20 million dollars if the person applies within sixty-three days of the date of losing prior creditable 21 coverage. In addition to the plan which equals or exceeds the basic coverage, the carrier shall 22 also offer to the eligible person, the individual standard plan as approved by the director or a plan 23 with benefits that exceed the standard plan. No carrier is required to issue further individual 24 health benefit coverage under §§ 58-17-68 to 58-17-87, inclusive, if the individual health benefit

plans issued to high-risk individuals constitute two percent or more of that carrier's earned

- 3 - HB 1050

premium on an annual basis from individual health benefit plans covered by §§ 58-17-66 to 58-17-87, inclusive. Each carrier who meets the two percent earned premium threshold shall report within thirty days to the director in a format prescribed by the director. If the director determines that all carriers in the individual market have met the two percent threshold, the threshold shall, upon order of the director, be expanded an additional two percent. The threshold shall be expanded in additional two percent increments if all carriers in the individual market meet the previous threshold. The director may promulgate rules pursuant to chapter 1-26 to determine which individual policies may be used to determine the two percent threshold, the procedures involved, and the applicable time frames. In making that determination, the director shall develop a method designed to limit the number of high-risk individuals to whom any one carrier may be required to issue coverage. No carrier is required to provide coverage pursuant to this section if:

- 13 (1) The applicant is eligible for continuation of coverage under an employer plan;
- 14 (2) The applicant's creditable coverage is a conversion plan from an employer group plan;
 15 or
- 16 (3) The person is covered or eligible to be covered under creditable coverage or lost creditable coverage due to nonpayment of premiums; or
 - (4) The person loses coverage under a short term or limited duration plan.

Any person who has exhausted continuation rights and who is eligible for conversion or other individual or association coverage has the option of obtaining coverage pursuant to this section or the conversion plan or other coverage. A person who is otherwise eligible for the issuance of coverage pursuant to this section may not be required to show proof that coverage was denied by another carrier.

- 4 - HB 1050

1 **BILL HISTORY**

- 2 1/12/99 First read in House and referred to Commerce. H.J. 41
- 3 1/21/99 Scheduled for Committee hearing on this date.
- 4 1/21/99 Commerce Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 105
- 5 1/21/99 Commerce Place on Consent Calendar.

State of South Dakota

SEVENTY-FOURTH SESSION LEGISLATIVE ASSEMBLY, 1999

400C0240

SENATE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. SB55 - 1/28/99

Introduced by: The Committee on Health and Human Services at the request of the Department of Human Services

1	FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the costs of care and
2	treatment and calculation thereof for persons receiving treatment from the Human Services
3	Center.
4	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
5	Section 1. That § 27A-13-2 be amended to read as follows:
6	27A-13-2. Terms used in this chapter mean:
7	(1)(a) "Full time equivalent patient population in the center's psychiatric nursing facility
8	unit," the total daily patient count in that unit at the South Dakota Human Services
9	Center for the immediately preceding fiscal year divided by the number of days in that
10	fiscal year;
11	(b) "Full time equivalent patient population, excluding psychiatric nursing facility
12	unit patients," the total daily patient count, excluding those patients in the
13	center's psychiatric nursing facility unit, at the South Dakota Human Services
14	Center for the immediately preceding fiscal year divided by the number of days
15	in that fiscal year;

- 2 - SB 55

1	(2)(a) "Per diem for the center's psychiatric nursing facility unit," the daily charge amount,
2	set by the secretary of human services, to be charged for the daily care, support,
3	maintenance, and treatment of a patient in the center's psychiatric nursing facility unit
4	during any part of the period of time for which the charge amount is set if it has been
5	determined that the patient or legally responsible person or agency is not able to pay
6	the total service charge;
7	(b) "Per diem for any of the center's treatment programs, other than the psychiatric
8	nursing facility unit," the daily charge amount, set by the secretary of human
9	services, to be charged for the daily care, support, maintenance, and treatment
10	of a patient in any of the center's acute, adolescent, alcohol, drug, extended
11	(chronic), or other such treatment units, other than the center's psychiatric
12	nursing facility unit, during any part of the period of time for which the charge
13	amount is set if it has been determined that the patient or legally responsible
14	person or agency is not able to pay the total service charge;
15	(3) "Responsible person," a person legally liable for the support and maintenance of a
16	patient. A parent is not liable for the expenses of his an adult child;
17	(4) "Total service charge," the actual cost of providing services to an individual patient
18	at the South Dakota Human Services Center.
19	Section 2. That chapter 27A-13 be amended by adding thereto a NEW SECTION to read
20	as follows:
21	The secretary of human services shall direct the Human Services Center to calculate and
22	maintain for each patient at the center a billing statement itemizing the individual charges for the
23	care, support, maintenance, and treatment provided to each patient. The center shall determine
24	the patient or legally responsible person or agency's ability to pay such charges considering such

factors as the person's financial ability to pay and the availability of commercial insurance or

25

- 3 - SB 55

- other third-party payors. If the center determines that the patient or legally responsible person
- 2 or agency is able to pay the total service charge, the charge shall be assessed and collected by
- 3 the Human Services Center. If the center determines that the patient or legally responsible person
- 4 lacks the ability to pay the total service charge based upon the before-mentioned considerations,
- 5 the patient's account shall be assessed to the state.
- 6 Section 3. That chapter 27A-13 be amended by adding thereto a NEW SECTION to read
- 7 as follows:
- 8 The secretary of human services shall promulgate rules, pursuant to chapter 1-26, to establish
- 9 a method to determine the fee for each service or test based on the actual cost of performing the
- service or test and the determination of ability to pay and indigence. The secretary of human
- services shall periodically review and approve the listing of itemized charges.
- 12 Section 4. That § 27A-13-7 be amended to read as follows:
- 13 27A-13-7. The secretary of human services shall periodically approve the individual charges
- 14 for the per diem rate for the care, support, maintenance, and treatment provided to each patient
- by or at the expense of the South Dakota Human Services Center for the fiscal year during which
- 16 the services are rendered and cause such charges amount, or portion thereof as may be
- appropriate, to be assessed monthly against and collected from the patient or responsible person,
- agency, or other entity legally liable for paying all or any part of the patient's applicable charges
- 19 amount if it has been determined that the patient or that the legally responsible person or agency
- 20 <u>is not financially able to pay the total service charge</u>.
- The secretary shall base the charges set the per diem rate based on the center's actual
- 22 expenditures during the fiscal year immediately preceding the fiscal year for which the charges
- 23 are amount is being determined and shall compute that determination of the charges amount as
- 24 follows:
- 25 (1) The total expenditures of the center for operating the center's psychiatric nursing

- 4 - SB 55

1 facility, including an apportionment of all the center's support services to that unit, for 2 the fiscal year immediately preceding the fiscal year for which the charges are amount 3 is being determined shall be computed in accordance with generally accepted 4 accounting procedures. In so doing, the secretary may not include any of the following: 5 6 (a) Capital expenditures for land or building fixed assets; 7 (b) Expenditures for special educational programs required by state or federal law 8 to be provided to center patients who are under the age of twenty-one years; (c) Expenditures for direct medical care provided to a patient at medical facilities 10 other than the center, the cost of which shall be charged directly against the 11 patient who received that care at the exact cost to the center as a "total service" 12 charge" for that care. 13 Those total expenditures shall then be divided by the average daily on roll census of 14 the center's psychiatric nursing facility unit to arrive at the per diem charge amount 15 for that unit for the fiscal year. 16 (2) The total expenditures of the center for operating all of its treatment units, excepting 17 its psychiatric nursing facility unit, including an apportionment of all the center's 18 support services to those units, for the fiscal year immediately preceding the fiscal 19 year for which charges are amount is being determined, shall be computed in 20 accordance with generally accepted accounting procedures. In so doing, the secretary 21 may not include the following: 22 (a) Capital expenditures for land or building fixed assets; 23 (b) Expenditures for special educational programs required by state or federal law 24 to be provided to center patients who are under the age of twenty-one years;

Expenditures for direct medical care provided to a patient at medical facilities

25

(c)

- 5 - SB 55

1	other than the center, the cost of which shall be charged directly against the
2	patient who received that care at the exact cost to the center as a "total service
3	charge" for that care.
4	Those total expenditures shall then be divided by the center's average daily on roll
5	census, excluding psychiatric nursing facility patients, to arrive at the per diem charge
6	amount for all the center's treatment units, excepting the psychiatric nursing facility
7	unit, for the fiscal year.
8	Section 5. That § 27A-13-8 be amended to read as follows:
9	27A-13-8. Any patient who is determined by the secretary of human services to be unable
10	to pay the total services charge, but who is determined, as set down provided in §§ 27A-13-9
11	and 27A-13-10, to be financially able to pay the per diem rate shall continue to be charged the
12	per diem cost for each day of continuous patient status.

- 6 - SB 55

1 **BILL HISTORY**

- 2 1/12/99 First read in Senate and referred to Health and Human Services. S.J. 25
- 3 1/16/99 Scheduled for Committee hearing on this date.
- 4 1/27/99 Scheduled for Committee hearing on this date.
- 5 1/27/99 Health and Human Services Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 204

State of South Dakota

SEVENTY-FOURTH SESSION LEGISLATIVE ASSEMBLY, 1999

400C0241

Senate health and human services committee engrossed no. SB64 - 1/27/99

Introduced by: The Committee on Health and Human Services at the request of the Department of Human Services

1	FOR AN ACT ENTITLED, An Act to revise, repeal, and reenact certain provisions pertaining
2	to persons with developmental disabilities.
3	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
4	Section 1. That § 27B-1-1 be repealed.
5	27B-1-1. The term "mentally retarded" as used in this title shall include any person with
6	significant subaverage general intellectual functioning and deficits in adaptive behavior.
7	Section 2. That § 27B-1-2 be repealed.
8	27B-1-2. Terms used in this Title mean:
9	(1) "Adjustment training center," any private nonprofit organization which receives
10	financial assistance from the state or its political subdivisions and which is established
1	or organized for the purpose of providing evaluations, therapy, and intensive day and
12	residential training and support services to individuals with a diagnosed developmental
13	disability and which meets the adopted rules of the Department of Human Services
14	for adjustment training centers;
15	(2) "Administrator." the chief executive officer of a facility:

- 2 - SB 64

1	(3)	"County board of mental retardation," the county board of mental illness provided for
2		in § 27A-7-1;
3	(4)	"Department," the Department of Human Services;
4	(5)	"Discharge," the official release of an individual from a facility by action of the facility
5		or a county board of mental retardation;
6	(6)	"Educational services," deliberate attempts to facilitate the development of an
7		individual;
8	(7)	"Facility," South Dakota Developmental Center Redfield or any facility which is
9		operated by the state, which regularly admits developmentally disabled persons and
10		provides residential and other services;
11	(8)	"Habilitation," the process by which the staff of a facility assists a resident to acquire
12		and maintain those life skills which enable him to cope more effectively with the
13		demands of his physical, mental, and social efficiency. The term includes programs of
14		formal and structured education and treatment;
15	(9)	"Resident" and "patient," any individual who resides in a facility and receives services
16		therefrom;
17	(10)	"Responsible relative" or "legally responsible relative," the father, or mother, or both
18		for their child or children, the husband for his wife and the wife for her husband;
19	(11)	"Treatment," the prevention, amelioration, or cure of a resident's physical disabilities
20		or illnesses.
21	Section	on 3. That § 27B-1-3 be repealed.
22	27B- 2	1-3. Terms used in this title mean:
23	(1)	"Developmental disability," a disability attributed to mental retardation, cerebral palsy,
24		epilepsy, or other neurological impairment designated by the secretary of human
25		services, which originates during the developmental period or originates as a result

- 3 - SB 64

1	of injury occurring anytime during the life of an individual, which can be expected to
2	continue indefinitely, which constitutes a substantial handicap, and which requires
3	services similar to those provided to mentally retarded persons;
4	(2) "Developmentally disabled person," any person who suffers from a developmental
5	disability.
6	Section 4. That § 27B-1-4 be repealed.
7	27B-1-4. As used in this title, the term "qualified developmental disabilities professional"
8	means a person who has specialized training or one year of experience in treating or working
9	with the mentally retarded and is one of the following:
10	(1) A psychologist with at least a master's degree from an accredited program in
11	psychology;
12	(2) A physician licensed to practice medicine or osteopathy;
13	(3) An educator with a bachelor's degree in education from an accredited program;
14	(4) A social worker with a bachelor's degree in social work from an accredited program,
15	or in a field other than social work and at least one year of social work experience
16	under the supervision of a qualified social worker;
17	— (5) A physical or occupational therapist;
18	(6) A speech pathologist or audiologist;
19	(7) A registered nurse;
20	(8) A therapeutic recreation specialist who is a graduate of an accredited program;
21	(9) A rehabilitation counselor who is certified by the committee on rehabilitation
22	counselor certification; or
23	(10) A case manager, with a bachelor's degree from an accredited program.
24	Except as provided in § 36-4-20, each qualified developmental disabilities professional shall
25	meet all licensing and certification requirements promulgated by the state of South Dakota and

- 4 - SB 64

any state professional licensing board for persons engaged in the practice of the same profession

- 2 in South Dakota.
- 3 Section 5. That § 27B-1-5 be repealed.
- 4 27B-1-5. No person shall be deemed incompetent to manage his affairs, to contract, to hold
- 5 professional or occupational or vehicle operator's licenses, to marry and obtain a divorce, to
- 6 register and vote, or to make a will, solely by reason of his admission or commitment to a facility
- 7 or because he was adjudicated mentally retarded.
- 8 Section 6. That § 27B-1-6 be repealed.
- 9 27B-1-6. A mentally retarded individual shall be admitted to a facility only pursuant to the
- 10 provisions of this title.
- 11 Section 7. That § 27B-1-7 be repealed.
- 12 27B-1-7. Any person who confines a person who is mentally retarded in any manner or in
- any place other than is authorized by law, is guilty of a Class 1 misdemeanor.
- Section 8. That § 27B-1-8 be repealed.
- 15 27B-1-8. Any officer required to perform an act, and any person accepting an appointment
- under the provisions of this title, who shall intentionally refuse or neglect to perform his duty as
- 17 herein prescribed, shall be guilty of a Class 1 misdemeanor, besides being liable to an action for
- 18 damages.
- 19 Section 9. That § 27B-1-9 be repealed.
- 20 27B-1-9. The departments of health, education, social services, human services and other
- 21 agencies serving persons with developmental disabilities, shall collect data on the incidence and
- 22 prevalence of autism on all yearly developmental disability statistical studies, surveys and
- 23 disability tracking systems or counts reported by each of the departments.
- 24 Autism shall be individually listed on the tracking systems or counts, as are mental
- 25 retardation, deaf and visually handicapped.

- 5 - SB 64

1	The confidentiality of identifying data shall be protected under the provisions and procedures
2	set forth at 34 CFR § 300.560 et seq. as in effect on July 1, 1988.
3	Section 10. That § 27B-1-10 be repealed.
4	27B-1-10. The Legislature hereby finds that:
5	(1) Research does not support the long-term efficacy of aversive behavioral intervention
6	(2) The use of aversive or abusive treatment raises disturbing legal and ethical issues, and
7	may well deprive the recipient of constitutional or statutory rights and be outside the
8	ethical guidelines imposed upon the treatment professional;
9	(3) Severely disabled persons have the same right to be treated with dignity and respec
10	as all other citizens; and
11	(4) The use of aversive and abusive treatments on persons with disabilities diminishes the
12	dignity and humanity of the treatment professional and the disabled person.
13	Section 11. That § 27B-1-11 be repealed.
14	27B-1-11. Any agency, facility, school or person who provides services to persons with
15	developmental disabilities shall be prohibited from using the following practices:
16	(1) Corporal punishmentphysical or verbal abuse, such as shaking, screaming, swearing
17	name calling or any other activity that would be damaging to an individual's physica
18	well-being or self-respect;
19	(2) Seclusion-placement of an individual alone in a room or other area from which egress
20	is prevented;
21	(3) Denial of food-preventing an individual from having access to a nutritionally
22	adequate diet as a means of modifying behavior. Persons enrolled in residentia
23	programs or living units shall be expected to partake in meals at a predetermined
24	scheduled time;

(4) An individual served disciplining other individuals enrolled; and

25

- 6 - SB 64

1 (5) Medication shall not be used as punishment, for the convenience of staff, as a

- 2 substitute for a program, or in quantities that interfere with an individual's
- 3 developmental program.
- 4 Section 12. That § 27B-1-12 be repealed.
- 5 27B-1-12. All agencies providing treatment to persons with developmental disabilities shall
- 6 review their treatment procedures to ensure compliance with §§ 27B-1-10 and 27B-1-11.
- 7 Section 13. That § 27B-1-13 be repealed.
- 8 27B-1-13. This legislation shall be enforced by the appropriate state department by assuring
- 9 adequate monitoring of, staffing of, and technical assistance to all agencies, schools or persons
- 10 providing services to those with developmental disabilities.
- 11 Section 14. That chapter 27B-1 be amended by adding thereto a NEW SECTION to read
- 12 as follows:
- The purposes of this title are to enhance environments and provide supports to enable
- persons with developmental disabilities to achieve and maintain physical well-being, personal and
- professional satisfaction, participation as community members, and safety from abuse, neglect,
- and exploitation; and to promote and safeguard the human dignity, constitutional and statutory
- 17 rights, social well-being, and general welfare of all persons with developmental disabilities in the
- 18 state.
- 19 Section 15. That chapter 27B-1 be amended by adding thereto a NEW SECTION to read
- as follows:
- The Department of Human Services shall develop, adopt, approve, coordinate, monitor,
- evaluate, and administer state and federally funded services for persons with developmental
- 23 disabilities and their families within South Dakota in cooperation with all governmental and
- 24 private resources and organizations concerned with developmental disabilities.
- Within the limits of available resources, the department shall:

- 7 - SB 64

1	(1)	Carry out all functions and duties required by statute through collaboration and
2		consultation with persons with developmental disabilities, their families, guardians,
3		community resources, organizations, and people who provide services throughout the
4		state;
5	(2)	Develop and maintain a statewide system of community-based services that reflect the
6		choices and needs of persons with developmental disabilities and their families;
7	(3)	Facilitate or provide technical assistance to community service providers in planning,
8		developing, and implementing services and supports for persons with developmental
9		disabilities;
10	(4)	Cooperate with federal agencies in the administration of the federal statutes and acts
11		relating to developmental disabilities programs, accept the benefits of such federal
12		statutes and acts subject to chapter 4-8B, and comply with the requirements thereof;
13	(5)	Conform the state plans to the federal requirements and submit them to the federal
14		agencies; and
15	(6)	Maintain a data collection system on the prevalence of developmental disabilities,
16		including autism, based on the needs of persons with developmental disabilities in the
17		current service delivery system.
18	Section	on 16. That chapter 27B-1 be amended by adding thereto a NEW SECTION to read
19	as follow	s:
20	The I	Department of Human Services may establish and use state, regional, or local boards or
21	councils	to assist in the planning and implementation of community services.
22	Section	on 17. That chapter 27B-1 be amended by adding thereto a NEW SECTION to read
23	as follow	s:
24	Term	s used in this title mean:

25 (1) "Behavior intervention program," a written set of instructions for changing or

- 8 - SB 64

1		modifying the behavior of a person with a developmental disability that specifies
2		behavior objectives for completion, procedures, and data collection procedures and
3		written to increase desirable behaviors or decrease undesirable behaviors;
4	(2)	"Community services provider," any person or entity, whether for-profit or not-for-
5		profit, which receives compensation for providing services to persons with
6		developmental disabilities;
7	(3)	"Danger to others," behavior which supports a reasonable expectation that the person
8		will inflict serious physical injury upon another person in the very near future. Such
9		behavior shall be evidenced by recent acts which constitute a danger of serious
10		physical injury for another person. Such acts may include a recently expressed threat
11		if the threat is such that, if considering its context or person's recent previous acts, it
12		is substantially supportive of an expectation that the threat will be carried out;
13	(4)	"Danger to self," recent behavior or related physical conditions which show there is
14		a danger of serious personal harm in the very near future as evidenced by an inability
15		to provide for some basic human needs such as food, clothing, shelter, physical health,
16		or personal safety;
17	(5)	"Department," the Department of Human Services;
18	(6)	"Director," the director of the South Dakota Developmental Center or a community
19		service provider;
20	(7)	"Facility," the South Dakota Developmental Center in Redfield, South Dakota;
21	(8)	"Informed consent," consent voluntarily, knowingly, and competently given without
22		any element of force, fraud, deceit, duress, threat, or other form of coercion, after
23		explanation of all information that a reasonable person would consider significant to
24		the decision in a manner reasonably comprehensible to general lay understanding;
25	(9)	"Least restrictive," an intervention in the life of a person with a developmental

- 9 - SB 64

1		disability that is the least intrusive and disruptive to the person's life and represents the
2		least departure from normal patterns of living that can be effective in meeting the
3		person's developmental needs;
4	(10)	"PASARR" or "Preadmission Screening/Annual Resident Review," a federally
5		mandated review of the application to a skilled nursing facility by a person with a
6		known or suspected mental illness and/or developmental disability in order to
7		determine if the skilled nursing facility or another community service provider can
8		appropriately serve the person's needs;
9	(11)	"Qualified mental retardation professional," any person with at least one year of
10		experience working directly with mental retardation or other developmental
11		disabilities and is either a doctor of medicine or osteopathy, a registered nurse, or a
12		person who holds at least a bachelor's degree in a professional category;
13	(12)	"Sterilization," a medical procedure or treatment designed to render a person unable
14		to produce children, specifically including hysterectomy, tubal ligation, and
15		vasectomy.
16	Section	on 18. That chapter 27B-1 be amended by adding thereto a NEW SECTION to read
17	as follow	s:
18	A dev	velopmental disability is any severe, chronic disability of a person that:
19	(1)	Is attributable to a mental or physical impairment or combination of mental and
20		physical impairments;
21	(2)	Is manifested before the person attains age twenty-two;
22	(3)	Is likely to continue indefinitely;
23	(4)	Results in substantial functional limitations in three or more of the following areas of
24		major life activity: self-care; receptive and expressive language; learning; mobility;
25		self-direction; capacity for independent living; and economic self-sufficiency; and

- 10 - SB 64

- 1 (5) Reflects the person's need for an array of generic services, met through a system of
- 2 individualized planning and supports over an extended time, including those of a life-
- 3 long duration.
- 4 Section 19. That § 27B-2-1 be repealed.
- 5 27B-2-1. The department of human services shall consider, determine and establish policy
- 6 and exercise such coordination and programs for developmental disabilities; develop, maintain
- 7 and operate programs for mental retardation, and coordinate the work of the state departments
- 8 involved in programs of consultation, care and training and carry out the duties imposed in this
- 9 title, or as otherwise authorized and assigned to the department by law.
- Section 20. That § 27B-2-2 be repealed.
- 11 27B-2-2. The department of human services shall develop, adopt, approve and administer
- state plans of coordination in the field of developmental disabilities for the state of South Dakota
- in cooperation with all governmental and private departments, resources and organizations
- 14 concerned with mental retardation.
- 15 Section 21. That § 27B-2-3 be repealed.
- 16 27B-2-3. The department of human services shall cooperate with federal agencies in the
- 17 administration of the federal statutes and acts relating to developmental disabilities programs,
- 18 accept the benefits of such federal statutes and acts subject to chapter 4-8B, and comply with the
- 19 requirements thereof.
- Section 22. That § 27B-2-4 be repealed.
- 21 27B-2-4. The department of human services shall conform the state plans and the federal
- 22 requirements and submit them to the federal agencies in order to qualify for grants available to
- 23 the state of South Dakota in the field of mental retardation.
- Section 23. That § 27B-2-5 be repealed.
- 25 27B-2-5. The department of human services shall coordinate the utilization of existing

- 11 - SB 64

1 facilities, state departments, boards or commissions involved in the field of mental retardation.

- 2 Section 24. That § 27B-2-6 be repealed.
- 3 27B-2-6. The department of human services may receive, acquire, have charge of, and
- 4 operate all properties for the purposes authorized herein. The department may receive gifts and
- 5 contributions from public and private sources and acquire other properties as an agency of the
- 6 state of South Dakota and hold and use the same for purposes herein. However, it may not
- 7 purchase, lease anything except office quarters as approved by the state commissioner of
- 8 administration, sell, encumber or alienate any real property without the specific consent and prior
- 9 approval of the Legislature.
- Section 25. That § 27B-2-7 be repealed.
- 27B-2-7. It is the purpose of this chapter to provide that all developmentally disabled persons
- 12 residing within this state may voluntarily receive appropriate services provided by the department
- of human services. A developmentally disabled person from another state or territory who enters
- 14 this state for the purpose of receiving care, treatment, education or training shall retain the
- 15 residence of his parent, guardian or agency standing in the place of parent or guardian.
- Section 26. That § 27B-2-8 be repealed.
- 17 27B-2-8. The department of human services may, from existing department funds or special
- 18 funds appropriated by the Legislature, establish and maintain contact with, and coordinate
- 19 services for, developmentally disabled individuals and their families in order to assure that
- 20 appropriate services are being received by disabled individuals and that anticipated or
- 21 unanticipated changes in needs of such individuals, arising from any crisis, are recognized and
- 22 appropriately met.
- 23 Section 27. That § 27B-2-9 be repealed.
- 24 27B-2-9. A developmentally disabled individual or any interested person may make
- 25 application for department services by contacting in person or in writing any official state or field

- 12 - SB 64

1 office of the department of human services, and submitting to an examination of his mental,

- 2 physical and educational condition so that the department may determine whether he is in need
- 3 of appropriate services.
- 4 Section 28. That § 27B-2-10 be repealed.
- 5 27B-2-10. A developmentally disabled individual or his parent or guardian may refuse
- 6 services provided to them by the department of human services. If the developmentally disabled
- 7 individual or his parent accepts services by the department, the department, parent, or disabled
- 8 individual may terminate the services at any time.
- 9 Section 29. That § 27B-2-11 be repealed.
- 10 27B-2-11. The secretary of human services may adopt reasonable and necessary rules
- establishing standards for adjustment training centers and other nonpublic facilities and services
- 12 for the mentally retarded and other developmentally disabled persons and for services to be
- 13 provided by the department of human services under this title. Such rules may be adopted in the
- 14 following areas:
- 15 (1) Staff requirements;
- 16 (2) Administration, audit requirements, and record keeping;
- 17 (3) Services provided;
- 18 (4) Client rights and safety;
- 19 <u>(5) Facility fire safety and sanitation requirements; and</u>
- 20 (6) Such other standards and requirements as are necessary for federal financial
- 21 participation.
- Section 30. That § 27B-2-12 be repealed.
- 23 27B-2-12. The department of human services shall consider the needs in the field of
- 24 developmental disabilities and make recommendations to the Legislature and the Governor for
- 25 changes in existing legislation.

- 13 - SB 64

- 1 Section 31. That § 27B-2-13 be repealed.
- 2 27B-2-13. This chapter shall not be construed as repealing chapter 34-7, but shall be held and
- 3 construed separate and in addition thereto.
- 4 Section 32. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read
- 5 as follows:
- The Department of Human Services shall coordinate the utilization of existing facilities, state
- 7 departments, boards, or commissions involved in the field of developmental disabilities.
- 8 Section 33. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read
- 9 as follows:
- The Department of Human Services may receive, acquire, have charge of, and operate all
- 11 properties for the purposes authorized by statute. The department may receive gifts and
- 12 contributions from public and private sources and acquire other properties as an agency of the
- 13 State of South Dakota and hold and use them for statutory purposes. However, it may not
- 14 purchase, lease anything except office quarters as approved by the state commissioner of
- administration, sell, encumber, or alienate any real property without the specific consent and
- prior approval of the Legislature.
- 17 Section 34. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read
- 18 as follows:
- A person with a developmental disability from another state or territory who enters this state
- 20 for the purpose of receiving services or education shall retain the residence of that person's
- 21 parent, guardian, or agency standing in the place of the person's parent or guardian.
- Section 35. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read
- as follows:
- Any person with a developmental disability or any other interested person may make
- 25 application for department services by contacting in person or in writing any official state or field

- 14 - SB 64

office of the Department of Human Services, and participating in an evaluation which may

- include mental, physical, and educational assessments so that the department may determine if
- 3 services are needed.
- 4 Section 36. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read
- 5 as follows:

2

- A person with a developmental disability or that person's parent or guardian may refuse
- 7 services offered by the Department of Human Services. If the person with a developmental
- 8 disability or that person's parent or guardian accepts services from the department, the
- 9 department, that person's parent or guardian, or the person with a developmental disability may
- 10 terminate the services at any time.
- 11 Section 37. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read
- 12 as follows:
- 13 The secretary of the department may promulgate, pursuant to chapter 1-26, reasonable and
- 14 necessary rules governing the procedure and conduct of contested cases, including notification
- of the denial of services. Such rules shall be consistent with the procedure required by chapter
- 16 1-26.
- 17 Section 38. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read
- 18 as follows:
- 19 The secretary of the Department of Human Services may promulgate, pursuant to chapter
- 20 1-26, reasonable and necessary rules establishing standards for community service providers,
- 21 South Dakota Developmental Center Redfield, and other nonpublic facilities, services, and
- supports for persons with developmental disabilities and for services and supports to be provided
- or purchased by the Department of Human Services under this title. Such rules may be adopted
- in the following areas:

- 15 - SB 64

- 1 (1) Staff requirements;
- 2 (2) Administration, audit requirements, and record keeping;
- 3 (3) Services and supports provided;
- 4 (4) Client rights and safety;
- 5 (5) Facility fire safety and sanitation requirements;
- 6 (6) Respite care;
- 7 (7) Family support;
- 8 (8) Preadmission Screening/Annual Resident Review (PASARR);
- 9 (9) Such other standards and requirements as are necessary for federal financial
- 10 participation; and
- 11 (10) Any other services and supports necessary to implement this title.
- Section 39. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read
- 13 as follows:
- 14 The Department of Human Services shall consider the needs in the field of developmental
- disabilities and shall make recommendations to the Legislature and the Governor for changes in
- 16 existing legislation.
- 17 Section 40. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read
- 18 as follows:
- This chapter may not be construed as repealing chapter 34-7, but shall be held and construed
- separate and in addition to chapter 34-7.
- 21 Section 41. That § 27B-3-1 be repealed.
- 22 27B-3-1. The facility for the mentally retarded as located and established upon the lands
- 23 donated therefor and conveyed to this state at Redfield, Spink county, shall be known as the
- 24 "South Dakota developmental center -- Redfield," and is under the control and supervision of
- 25 the department of human services.

- 16 - SB 64

- 1 Section 42. That § 27B-3-2 be repealed.
- 2 27B-3-2. The South Dakota developmental center -- Redfield shall be maintained for the
- 3 purpose of providing treatment, training, instruction, care, habilitation, and support of
- 4 developmentally disabled persons of this state.
- 5 Section 43. That § 27B-3-4 be repealed.
- 6 27B-3-4. The ultimate aim of each facility shall be to foster those behaviors that maximize
- 7 the human qualities of each resident, increase the self-direction of his behavior, enhance his
- 8 ability to cope with his environment, and return him to the community.
- 9 Section 44. That § 27B-3-5 be repealed.
- 10 27B-3-5. The secretary of human services shall appoint a competent administrator for the
- 11 South Dakota developmental center -- Redfield, who shall serve at the pleasure of the secretary.
- Section 45. That § 27B-3-6 be repealed.
- 13 27B-3-6. Such administrator shall have the supervision of the care, treatment, and education
- of the patients of such institution, under the direction of the secretary of human services and in
- 15 accordance with the rules established by the department of human services.
- Section 46. That § 27B-3-7 be repealed.
- 17 27B-3-7. Under the advice and consent of the secretary of human services, the administrator
- 18 shall appoint instructors meeting the qualifications required of teachers of comparable work in
- 19 the public schools of this state for the education of all patients, and other necessary employees
- 20 for the management of such institution.
- 21 Section 47. That § 27B-3-8 be repealed.
- 22 27B-3-8. The administrator may receive and accept from any persons, organization or estate,
- 23 gifts of money or personal property on behalf of the South Dakota developmental center --
- 24 Redfield, or the patients therein, and use such gifts for the purposes specified by the donor if
- 25 such use is consistent with the law. In the absence of a specified purpose, the administrator shall

- 17 - SB 64

1 use such money or personal property for the benefit of the South Dakota developmental center

2 -- Redfield or for the general benefit of the patients therein. The administrator shall keep an

3 accurate record of the amount or kind of gift, the date received, manner expended, and the name

and address of the donor. Any increase resulting from such gift may be used for the same

5 purpose as the original gift.

Section 48. That § 27B-3-9 be repealed.

27B-3-9. Pursuant to reasonable rules adopted by the department of human services, the administrator of the South Dakota developmental center -- Redfield may receive a person for examination, evaluation and treatment, for the existence of mental retardation or the suitability of the subject for institutional care and training for a period not to exceed sixty days, upon the receipt of a written application by the parents or guardian, and upon payment in advance of one month's charge at the rate established pursuant to this chapter. The sixty-day limitation is not a limitation on the length of a voluntary admittance. Whenever the administrator accepts a person for examination, evaluation and treatment or accepts a person on a voluntary admission, he shall immediately notify the county board and county commissioners of the person's county of residence.

Section 49. That § 27B-3-9.1 be repealed.

27B-3-9.1. Every person voluntarily or involuntarily entering the facility shall prior to admission, be required to present to the administrator, certification from a licensed physician that he has received a test or tests for tuberculosis and is free from a contagious form of this disease and he has received or is in the process of receiving immunization against poliomyelitis, diphtheria, measles, pertussis, tetanus, or any other diseases as deemed necessary by the licensed physician in charge of immunizations at the facility, by such means of immunizations as are approved by the state board of health, or in the way of an alternative to such requirement shall present:

- 18 - SB 64

1	(1) Certification from a licensed physician stating the physical condition of the person
2	would be such that a test and immunization would endanger his life or health; or
3	(2) A written statement signed by one parent or guardian that the person is an adherent
4	to a belief whose teachings are opposed to such test and immunization; or
5	(3) A written statement signed by one parent or guardian requesting that the local health
6	department or the facility give the test and immunization because the parents or
7	guardians lack the means to pay for such tests and immunization; or
8	(4) A written statement from a licensed physician requesting that the person not be
9	immunized.
10	Section 50. That § 27B-3-9.2 be repealed.
11	27B-3-9.2. The facility shall provide the test or tests for tuberculosis and the immunizations
12	required to such residents as are not provided therewith by their parents or guardians and who
13	have not been exempted.
14	Section 51. That § 27B-3-10 be repealed.
15	27B-3-10. A resident in a state facility may be transferred to any other facility, or to a
16	hospital operated by the state if the transfer would be in the best interest of the resident; the
17	administrator of the sending facility approves the transfer; and the administrator of the receiving
18	facility approves the transfer.
19	Section 52. That § 27B-3-11 be repealed.
20	27B-3-11. The resident and his nearest relative or guardian shall be notified at least seven
21	days prior to any transfer pursuant to § 27B-3-10, except that a transfer may be effected earlier
22	if necessitated by an emergency. In addition, the resident may designate two other persons to
23	receive the notice.
24	If a transfer is effected due to an emergency, the required notices shall be given as soon as
25	possible, but not later than twenty-four hours after the transfer.

- 19 - SB 64

- 1 Section 53. That § 27B-3-12 be repealed.
- 2 27B-3-12. The department of human services shall consult with the immediate family of any
- 3 proposed transferee under chapter 27A-6 and, in the case of a proposed transferee from an
- 4 institution of this state to an institution in another state, take no final action without approval of
- 5 the county board of mental retardation.
- 6 Section 54. That § 27B-3-13 be repealed.
- 7 27B-3-13. If any patient of the South Dakota Developmental Center ---- Redfield dies
- 8 leaving less than three hundred dollars in money on deposit with the administrator, such money
- 9 shall be transferred by the administrator to the recreation fund of such institution. If the money
- on deposit is the sum of three hundred dollars or more, the administrator shall hold it for the
- benefit of the county legally obligated for the care of the patient for the purpose of satisfying any
- 12 lien of the county against the estate of the patient.
- The administrator shall give timely notice of such deposit to the county auditor and to the
- 14 clerk of courts of the county and the amount of money held. If the county has waived or fails to
- 15 commence proceedings on its lien, or if no proceedings for probate or administration of the
- 16 estate have commenced within six months from the time of giving the notice to the clerk of
- 17 courts, or if in the course of administration it is found that there are no heirs to the estate, then
- the amount of the deposit shall, notwithstanding § 29A-3-914, escheat to the recreation fund.
- Any indebtedness, not in excess of one hundred dollars, incurred by the facility prior to the
- 20 patient's death for the benefit of the patient may be paid by the facility from the deceased
- 21 resident's funds on deposit with the administrator. This liability shall take precedence over the
- 22 county lien.
- Section 55. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
- 24 as follows:
- 25 The facility located and established upon lands donated and conveyed to this state at

- 20 - SB 64

1 Redfield, Spink County, shall be known as the South Dakota Developmental Center. The

- 2 supports and services provided by the South Dakota Developmental Center shall be under the
- 3 control and supervision of the Department of Human Services.
- 4 Section 56. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
- 5 as follows:
- 6 The South Dakota Developmental Center shall provide supports and services for persons
- 7 with developmental disabilities and other persons who may benefit from those supports and
- 8 services offered by the South Dakota Developmental Center. The South Dakota Developmental
- 9 Center may provide onsite and offsite additional supports and services in order to increase the
- self-direction of each person with a developmental disability's behavior, and to enhance each
- person with a developmental disability's ability to live in the least-restrictive environment.
- Section 57. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
- 13 as follows:
- Every person with a developmental disability voluntarily or involuntarily admitted to the
- facility shall be free from communicable diseases as deemed necessary by a licensed physician in
- 16 charge of tests and immunizations at the facility, by such means of tests and immunizations as
- are approved by the Department of Health or shall present:
- 18 (1) Certification from a licensed physician stating the physical condition of the person
- with a developmental disability would be such that a test and immunization would
- endanger the person's life or health; or
- 21 (2) A written statement signed by a parent or guardian of the person with a
- developmental disability that the person is adherent to a belief whose teachings are
- 23 opposed to such test and immunization; or
- 24 (3) A written statement signed by a parent or guardian of the person with a
- developmental disability requesting that the local health department or the facility give

- 21 - SB 64

1 the test and immunization because the parent or guardian lacks the means to pay for 2 such tests and immunization; or 3 (4) A written statement from a licensed physician requesting that the person with a 4 developmental disability not be immunized. 5 Section 58. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read 6 as follows: 7 The facility shall provide the test and the immunizations required to such persons with 8 developmental disabilities as are not provided by a parent or guardian and who have not been 9 exempted pursuant to section 57 of this Act. 10 Section 59. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read 11 as follows: 12 The secretary of the Department of Human Services shall appoint a director to act as the 13 chief executive officer of the South Dakota Developmental Center. The director shall supervise 14 the supports, services, and education of the persons served at the facility, under the direction of 15 the secretary of the Department of Human Services. 16 Section 60. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read 17 as follows: 18 No person may be admitted to the South Dakota Developmental Center other than as 19 authorized by law. Any person who detains a person with a developmental disability in any other 20 manner or in any other place than as authorized by law is guilty of a Class 1 misdemeanor. 21 Section 61. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read 22 as follows: 23 Any person with a developmental disability may be admitted to the South Dakota 24 Developmental Center if the county review board orders commitment pursuant to the process

25

provided in this title.

- 22 - SB 64

1 Section 62. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read 2 as follows: 3 Any person who is eighteen years of age or older and who has a developmental disability may 4 be admitted to the South Dakota Developmental Center on a voluntary admission basis in 5 accordance with procedures established by the Department of Human Services if an application 6 for admission has been executed by the person with a developmental disability, if the person is 7 competent to do so, or by the person's guardian. 8 Section 63. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read as follows: 10 Any person who is under the age of eighteen years and who has a developmental disability 11 may be admitted to the South Dakota Developmental Center on a voluntary admission basis in 12 accordance with procedures established by the Department of Human Services if an application 13 for admission has been executed by the person's parent, guardian, or, in the absence of a parent 14 or guardian, a person in loco parentis. 15 Section 64. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read 16 as follows: 17 If it is determined that any other person would benefit from supports and services offered at 18 the South Dakota Developmental Center that person may be admitted on a voluntary admission 19 basis in accordance with procedures established by the Department of Human Services. 20 Section 65. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read 21 as follows: 22 Each person admitted to the South Dakota Developmental Center shall receive and complete 23 a comprehensive evaluation within thirty days of admission to determine the appropriateness of 24 continued supports and services at the facility. The appropriateness of continued supports and

25

services shall be reviewed at least annually.

- 23 - SB 64

Section 66. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read

- 2 as follows:
- 3 Upon accepting a person for admission to the South Dakota Developmental Center, the
- 4 county auditor of the person's county of residence shall be notified by the facility's director.
- 5 Section 67. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
- 6 as follows:
- Notwithstanding chapter 25-7, when any person is admitted to a facility only the admittee
- 8 is responsible for the cost of supports and services to the extent and in the manner provided by
- 9 this chapter. If the cost of supports and services is a proper charge of the federal government,
- the costs shall be assessed against the appropriate agency of the federal government.
- Section 68. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
- 12 as follows:
- The Department of Human Services shall collect and process fees due to the state for the
- 14 cost of supports and services for persons with developmental disabilities.
- 15 Section 69. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
- 16 as follows:
- 17 The secretary of the Department of Human Services shall periodically determine the
- individual cost of supports and services provided to persons in the facility.
- 19 Section 70. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
- as follows:
- 21 Any person in the facility who is determined by the secretary of the Department of Human
- 22 Services to be financially able to pay shall be charged the per diem rate.
- Section 71. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
- 24 as follows:
- 25 Any person in the facility may apply to the secretary of the Department of Human Services

- 24 - SB 64

1 to pay less than the per diem rate. On receipt of such application, the secretary shall determine

- 2 the ability of the person in the facility to pay all or a part of the applicable charge.
- 3 Section 72. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
- 4 as follows:
- 5 Upon receipt of all information desired by the secretary of the Department of Human
- 6 Services, the secretary shall determine, based upon the financial ability of the person in the
- 7 facility, whether the person shall be charged with the full amount or a lesser amount. If a person
- 8 in the facility or county where the person in the facility resides, disagrees with the determination
- 9 of the secretary of the Department of Human Services, a grievance may be filed with the
- secretary within thirty days from the date of such determination. However, such a grievance may
- 11 not be filed more than once each every six months. The decision of the secretary is final.
- Section 73. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
- 13 as follows:
- If any person in the facility refuses or fails to make such payments, the charges may be
- 15 collected by a civil action brought in the name of the State of South Dakota. The state may
- 16 commence an action against such person for payments due, and any judgment obtained shall be
- a lien upon the real property of such person, and shall be collected as other judgments. Any claim
- arising under section 67 of this Act has the same force and effect against the real and personal
- 19 property of a deceased person as other debts of a decedent and shall be ascertained and
- 20 recovered in the same manner.
- 21 Section 74. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
- as follows:
- The statute of limitations upon any claim of the state for the care of a person in the facility
- 24 is three years and does not commence to run until the death of the person, but an action may be
- commenced at any time during the life of the person.

- 25 - SB 64

Section 75. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
as follows:

Each county shall be assessed sixty dollars per month for each person receiving supports and services at the South Dakota Developmental Center unless the responsibility therefore has been placed upon the state at large. In the event of a dispute as to that person's residence, no payments made by any county constitute an admission that the person in the facility is a resident of such county. The procedures for determining the county of residence shall be that described in sections 77 and 78 of this Act. These moneys shall be used to match federal funds which may be made available under the provisions of Title XIX of the Social Security Act as amended, or its successors, at the South Dakota Developmental Center.

Section 76. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read as follows:

If a person with a developmental disability has been placed under the control of a child welfare agency as defined by § 26-6-1 for adoption, and prior to adoption is found to have a developmental disability, then the county board of mental retardation may direct that the expenses for the care, education, and maintenance of such person be borne by the state at large in which event no finding as to the county being legally obligated to support such person shall be made. The board shall forthwith notify the board of social services who may petition for letters of guardianship. For minors in the custody of the state, the county is not legally obligated to pay for such person. Expenses for such person shall be borne by the state at large.

Section 77. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read as follows:

If the administrator of a facility has cared for or maintained a person with a developmental disability from a county and the state's attorney or the county commissioners of the county claim that the person is not a proper charge against the county, the state's attorney or the county

- 26 - SB 64

1 commissioners shall notify the attorney general that the person in the facility is a proper charge 2 against another county, or against the state at large if the person in the facility is not a resident 3 of the state. The attorney general shall notify the county auditor of the county to file any proof 4 within thirty days from the date of such notification. Upon receipt of such, the attorney general 5 shall investigate the location of the residence of the person in the facility to determine if a county 6 and which county should be charged. The attorney general shall notify the county auditor and 7 the director of the South Dakota Developmental Center of the determination. Thereafter, the 8 administrator shall charge for supports and services according to the determination of the attorney general. 10 Section 78. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read 11 as follows: 12 If any county is dissatisfied with the determination of the attorney general, the county may 13 appeal to the circuit court. 14 Section 79. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read 15 as follows: 16 Expenses paid by one county, on behalf of any person at the South Dakota Developmental 17 Center whose residence is in another county, shall be refunded with lawful interest by the county 18 of residence. 19 Section 80. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read 20 as follows: 21 All charges to a county under section 35 of this Act shall be certified each month by the 22 secretary of the Department of Human Services to the county auditor. The billing shall include 23 an itemized listing of charges. The billing shall be sent to county auditors no later than the fifth 24 day of the month. Upon receiving the billing, the county shall pay the amount due to the state

remittance center within the time period established by chapter 4-3.

25

- 27 - SB 64

Section 81. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read

- 2 as follows:
- 3 All payments made in accordance with this chapter for the supports and services of persons
- 4 at the South Dakota Developmental Center shall be deposited in the general fund.
- 5 Section 82. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
- 6 as follows:
- Any person in a state facility may be transferred to any other state or private facility if the
- 8 person would benefit from the treatment offered at the facility. A transfer may only be made with
- 9 the mutual consent of both facilities or agencies. No transfer may occur until all reasonable
- efforts have been made to consult with the person and the person's nearest relative or guardian.
- However, the transfer may be effected earlier if necessitated by an emergency. If an emergency
- situation arises, the required notice shall be given as soon as possible thereafter.
- Section 83. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
- 14 as follows:
- 15 The Department of Human Services, upon recommendation of the person's interdisciplinary
- team, shall consult with the person with a developmental disability and that person's immediate
- family or guardian regarding any proposed transfer from a facility of this state to a facility of
- another state pursuant chapter 27A-6.
- 19 Section 84. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
- as follows:
- 21 Every person voluntarily entering a facility for persons with developmental disabilities shall
- be given oral and written notice of release procedures upon admission. All persons voluntarily
- entering the facility, regardless of age, have the right to discharge within twenty-four hours after
- 24 request.
- 25 Section 85. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read

- 28 - SB 64

- 1 as follows:
- A facility may temporarily detain a voluntarily admitted person with a developmental
- 3 disability for twenty-four hours after the request for discharge to initiate emergency commitment
- 4 procedures, pursuant to section 163 of this Act, if the person's interdisciplinary team determines
- 5 that the person presents an immediate danger to self or others as defined in section 162 of this
- 6 Act.
- 7 Section 86. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
- 8 as follows:
- 9 The director, based upon the recommendation of the person's interdisciplinary team, may at
- any time discharge a voluntarily admitted person. If a person with a developmental disability was
- voluntarily admitted by a parent or guardian, the director shall notify the parent or guardian of
- the discharge ten days prior to the person's release and shall notify the parent or guardian of
- other supports and services available in an alternative setting.
- Section 87. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
- as follows:
- Any person with a developmental disability admitted to the facility pursuant to this title who
- leaves the facility without authorization or fails to return to the facility while on an authorized
- leave or other authorized absence from the facility, may be returned to the facility.
- 19 Section 88. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
- as follows:
- The South Dakota Developmental Center shall notify the Spink County Sheriff of any
- 22 unauthorized absence from the facility. Any law enforcement officer knowing the whereabouts
- of any person absent from the facility shall detain the absent person and immediately notify both
- 24 the South Dakota Developmental Center and the Spink County Sheriff. The South Dakota
- 25 Developmental Center shall arrange for the return of the person with a developmental disability

- 29 - SB 64

- 1 to the facility within forty-eight hours thereafter.
- 2 Section 89. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
- 3 as follows:
- 4 If the director of a facility determines that a person eighteen years of age or older with a
- 5 developmental disability receiving services and supports from the facility requires a guardian or
- 6 conservator and there is no one qualified and willing to petition for letters of guardianship or
- 7 conservatorship, the director shall inform the secretary of the Department of Human Services.
- 8 Section 90. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
- 9 as follows:
- Six months prior to the eighteenth birthday of each person with a developmental disability
- in the facility, the person shall be evaluated by the facility to determine whether the person is
- 12 competent to execute an application for voluntary admission.
- 13 Section 91. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
- 14 as follows:
- 15 If the facility determines after evaluation pursuant to section 90 of this Act, that the person
- with a developmental disability is not competent to execute an application for voluntary
- admission or that the person otherwise requires the protective services of a guardian, that
- person's parent, or if none, another interested person or entity shall be notified and requested to
- 19 file a petition for the appointment of a guardian. If no petition is filed, the director shall inform
- 20 the secretary of the Department of Human Services.
- 21 Section 92. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
- as follows:
- The director may receive and accept from any person, organization, or estate gifts of money
- or personal property on behalf of the South Dakota Developmental Center or any person with
- developmental disabilities residing in the center, and use such gifts for the purposes specified by

- 30 - SB 64

1 the donor if such use is consistent with law. In the absence of a specified purpose, the director

- 2 shall use such money or personal property for the benefit of the South Dakota Developmental
- 3 Center or for the general benefit of the persons with developmental disabilities residing in the
- 4 center. The director shall keep an accurate record of the name and address of the donor, the gift,
- 5 the date received, and the manner expended. Any increase resulting from such gift may be used
- 6 for the same purpose as the original gift.
- 7 Section 93. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
- 8 as follows:
- 9 If any person with a developmental disability at the South Dakota Developmental Center dies
- leaving less than three hundred dollars in money in deposit with the director, the director may
- transfer the sum to the recreational fund of that facility. If the amount in deposit exceeds three
- hundred dollars, the director shall hold the funds for the county responsible for the care of the
- person for the purpose of satisfying any lien the county has on the estate of the deceased person.
- The director shall give timely notice of the amount of this deposit to the county auditor and
- 15 to the clerk of courts of the county. If the county does not commence proceedings on its lien,
- or if no proceedings for probate or administration of the estate are commenced within six months
- 17 from the date of such notice to the clerk of courts, or if, in the course of administration, it is
- found that the decedent has no heirs pursuant to § 29A-2-103, then the amount of the deposit
- shall return to the recreation fund of the South Dakota Developmental Center notwithstanding
- § 29A-3-914. Any indebtedness, not in excess of one hundred dollars incurred by the facility in
- care of the deceased shall be paid from the deceased's funds in deposit with the director, and the
- debt takes precedence over the county lien.
- Section 94. That § 27B-4-1 be repealed.
- 24 27B-4-1. The department of human services may establish community services specifically
- 25 designed to meet the needs of the developmentally disabled.

- 31 - SB 64

- 1 Section 95. That § 27B-4-2 be repealed.
- 2 27B-4-2. The department of human services may establish and use state, regional, or local
- 3 boards or councils to assist in the planning and implementation of this chapter.
- 4 Section 96. That § 27B-4-3 be repealed.
- 5 27B-4-3. Each county shall annually budget and appropriate funds for the establishment,
- 6 support or operation of community developmental disability services. The amount appropriated
- 7 may not be less than ten cents per capita nor more than fifty cents per capita of the population
- 8 of such county as shown by the most recently published federal-state cooperative program for
- 9 population estimates printed by the United States department of commerce. The appropriation
- 10 shall be made pursuant to § 27A-5-9.
- 11 Section 97. That § 27B-4-4 be repealed.
- 12 27B-4-4. County funds generated by this chapter shall be utilized for approved projects
- within the regions in which the counties are located. Regions, or counties may, in their discretion,
- 14 utilize all or a portion of the funds available to them to purchase services from without their
- 15 region. Designated state funds shall be utilized to match the county and municipality funds at a
- 16 rate to be determined by the secretary of human services and to find community services of a
- 17 statewide nature.
- Section 98. That § 27B-4-5 be repealed.
- 19 27B-4-5. Funds generated by this chapter shall be used for the purposes of providing
- 20 individual services, group services, or arranging for purchase of services in facilities approved
- 21 by the department of human services.
- Section 99. That § 27B-4-6 be repealed.
- 23 27B-4-6. Facilities and services receiving financial assistance from funds under this chapter
- 24 shall be approved by the department of human services and meet all applicable standards adopted
- 25 by the department.

- 32 - SB 64

- 1 Section 100. That § 27B-4-8 be repealed.
- 2 27B-4-8. All rules, regulations, and standards relating to the implementation of this chapter
- 3 will be established using the procedures set forth in chapter 1-26.
- 4 Section 101. That chapter 27B-4 be amended by adding thereto a NEW SECTION to read
- 5 as follows:
- 6 Each county may annually budget and appropriate funds for the establishment, support, or
- 7 operation of community service providers pursuant to § 27A-5-9.
- 8 Section 102. That chapter 27B-4 be amended by adding thereto a NEW SECTION to read
- 9 as follows:
- Funds budgeted and appropriated under this chapter shall be used by community service
- providers approved by the Department of Human Services.
- Section 103. That § 27B-5-1 be repealed.
- 27B-5-1. An individual may be temporarily admitted to a facility for appropriate purposes,
- including respite care, if an application for temporary admission is executed by a person legally
- empowered to make the application and if it is determined by the administrator of the facility that
- the individual is suitable for admission. The services to be provided to the individual shall be
- 17 determined by mutual agreement between the facility and the person making the application,
- 18 except that no individual may be temporarily admitted for more than thirty days.
- 19 Section 104. That § 27B-5-2 be repealed.
- 20 27B-5-2. An individual with a developmental disability other than mental retardation is
- 21 eligible for temporary and voluntary admission pursuant to §§ 27B-5-1 to 27B-5-6, inclusive,
- 22 but is not eligible for board-ordered admission.
- Section 105. That § 27B-5-3 be repealed.
- 24 27B-5-3. An individual eighteen years of age or older may be admitted to a facility on a
- 25 voluntary admission basis pursuant to § 27B-5-1 if an application for his admission is executed

- 33 - SB 64

by the individual himself if he is competent to do so, or by his guardian if he is not competent to

- 2 do so, and if it is determined that he is suitable for admission.
- 3 Section 106. That § 27B-5-4 be repealed.
- 4 27B-5-4. An individual under eighteen years of age may be admitted to a facility on a
- 5 voluntary parental or guardian admission basis pursuant to § 27B-5-1 if an application for his
- 6 admission is executed by his parent, guardian, or, in the absence of a parent or guardian, a person
- 7 in loco parentis, and if it is determined that he is suitable for admission.
- 8 Section 107. That § 27B-5-5 be repealed.
- 9 27B-5-5. The application for admission pursuant to § 27B-5-1 shall contain the facts which
- are the basis for the assertion that the individual meets the criteria of a developmentally disabled
- 11 person, names and addresses of any witness to the facts, and if known the name and address of
- 12 the nearest relative or guardian of the individual.
- 13 Section 108. That § 27B-5-6 be repealed.
- 14 27B-5-6. An application for voluntary parental or guardian admission shall contain in large
- 15 type and simple language the substance of §§ 27B-5-7 to 27B-5-16, inclusive. At the time of
- admission, the rights set forth in the application shall be explained to the resident if he is at least
- 17 thirteen years of age and to the person who executed the application for his admission. In
- 18 addition, a copy of the application shall be given to the aforementioned persons and to one other
- 19 person if designated by a resident who is at least thirteen years of age. If the resident was not
- 20 thirteen years of age at the time of his admission, the rights mentioned above shall be explained
- 21 to him upon his thirteenth birthday.
- Section 109. That § 27B-5-7 be repealed.
- 23 27B-5-7. Prior to the voluntary admission of an individual, the individual may be received
- 24 by a facility for up to sixty days in order for a preadmission examination to be conducted. No
- 25 individual may be voluntarily admitted unless he has been given a preadmission examination by

- 34 -SB 64

- 1 the facility for the purpose of determining his suitability for admission.
- 2 Section 110. That § 27B-5-8 be repealed.
- 3 27B-5-8. The preadmission examination shall include mental, physical, social, and
- 4 educational evaluations, and shall be conducted under the supervision of a qualified
- developmental disabilities professional. The results of the examination shall be contained in a 5
- report to be made part of the individual's records, and the report shall also contain a statement 6
- 7 indicating the least restrictive alternatives for treatment of the examined individual.
- 8 Section 111. That § 27B-5-9 be repealed.
- 9 27B-5-9. Objections to the admission of any voluntarily admitted resident, may be filed with 10 the board of mental retardation for the county in which the individual is a resident or the county 11 in which the facility is located by any person found suitable by the county board or by the 12 resident himself if he is at least thirteen years of age. An objection may be made not more than 13 thirty days after admission of the resident, but may be subsequently at any twelve-month interval 14 following the date of the original objection or, if an original objection was not made, at any 15
- 16 Section 112. That § 27B-5-10 be repealed.
- 27B-5-10. Any objection to the admission of a voluntarily admitted resident shall be made 17 18 in writing, except that if made by the resident, it may be communicated to the chairman of the
- 19 board of mental retardation by any means, including but not limited to oral communication or
- 20 informal letter. If the resident informs the facility that he desires to object to his admission, the
- 21 facility shall assist him in submitting his objection to the board.

twelve-month interval following the date of admission.

- 22 Section 113. That § 27B-5-11 be repealed.
- 23 27B-5-11. Upon receiving notice of an objection to the admission of a voluntarily admitted
- 24 resident, the board of mental retardation shall schedule a hearing to be held within seven days,
- 25 excluding Sundays and holidays. The board shall notify the person who objected, the resident,

- 35 - SB 64

1 the person who executed the application, and the administrator of the facility of the time and

- 2 place of the hearing.
- The hearing shall be governed by those provisions of §§ 27B-7-2 to 27B-7-16, inclusive, that
- 4 the board deems necessary to ensure that all relevant information is brought to its attention, and
- 5 by the provisions of §§ 27B-5-12 to 27B-5-14, inclusive. Every resident shall be entitled to be
- 6 represented by counsel.
- 7 Section 114. That § 27B-5-12 be repealed.
- 8 27B-5-12. The board of mental retardation shall sustain an objection to the admission of a
- 9 voluntarily admitted resident and order the discharge of the resident if the resident is not in need
- of the care and treatment which is available at the facility or if an alternative to care and
- treatment in a facility is available and adequate to meet the resident's needs.
- Section 115. That § 27B-5-13 be repealed.
- 13 27B-5-13. Unwillingness or inability of the parent, guardian, or person in loco parentis to
- 14 provide for a voluntarily admitted resident's management, care, or residence shall not be grounds
- for refusing to sustain the objection and order discharge, but in that event the board of mental
- 16 retardation may cause a proceeding to be convened in an appropriate court to ensure that
- 17 suitable management, care, or residence for the resident is provided after his discharge.
- Section 116. That § 27B-5-14 be repealed.
- 19 <u>27B-5-14</u>. Unless the board of mental retardation sustains an objection and orders the
- 20 discharge of a voluntarily admitted resident, the facility may continue to provide residential and
- 21 other services to the resident.
- Section 117. That § 27B-5-15 be repealed.
- 23 27B-5-15. At least once annually each voluntarily admitted resident shall be reexamined to
- 24 determine whether he is still suitable for residential habilitation.
- Section 118. That § 27B-5-16 be repealed.

- 36 - SB 64

1 27B-5-16. A facility may detain a voluntarily admitted resident for a period not exceeding

- 2 seven days from the time that the person who executed the application for the resident's
- 3 admission gives written notice to the facility of his intention that the resident leave the facility.
- 4 Section 119. That § 27B-5-17 be repealed.
- 5 27B-5-17. Every person voluntarily entering a mental retardation facility shall be given a
- 6 separate written notice of release procedures and be orally informed of release procedures.
- 7 Detailed release procedures for voluntary admittance shall be permanently and prominently
- 8 displayed in every ward. All persons voluntarily entering the facility regardless of age shall have
- 9 the right to discharge upon request, as provided in § 27B-5-16.
- Section 120. That § 27B-5-18 be repealed.
- 11 27B-5-18. The administrator of a facility may at any time, discharge a voluntarily admitted
- 12 resident whom the administrator deems suitable for discharge. If a resident was admitted on a
- 13 voluntary parental or guardian admission basis, the administrator shall notify the parent or
- 14 guardian of the discharge ten days prior to the resident's release. If board proceedings are
- pending, the administrator shall notify the county board of mental retardation of the discharge.
- 16 In all discharges, the administrator shall notify the county auditor.
- 17 Section 121. That § 27B-6-1 be repealed.
- 18 27B-6-1. The county board of mental retardation shall make investigations of any complaints
- 19 made by a responsible individual who alleges that a person is mentally retarded and not receiving
- 20 proper care or education. If the county board determines that a person is mentally retarded, not
- 21 receiving proper care and education, and there is no responsible relative to take custody of the
- 22 person or petition for guardianship, the board shall notify the secretary of human services.
- Section 122. That § 27B-6-2 be repealed.
- 24 27B-6-2. For the purposes of such investigation and examination as required in this chapter,
- 25 each county board of mental retardation shall have access to the school records of any case under

- 37 - SB 64

1 investigation; and all school superintendents, are hereby required to furnish such records upon

- 2 demand. It shall be the duty of the department of social services, to assist the county board of
- 3 mental retardation in making its investigations as provided in § 27B-6-1.
- 4 Section 123. That § 27B-6-3 be repealed.
- 5 27B-6-3. If any resident of a facility eighteen years of age or older, does not have a guardian
- 6 or conservator and there is no one qualified and willing to petition for letters of guardianship or
- 7 conservatorship, and the administrator of the facility determines that the resident requires the
- 8 protective services of a guardian or conservator, the administrator shall inform the secretary of
- 9 human services.
- Section 124. That § 27B-6-4 be repealed.
- 11 27B-6-4. Six months prior to the eighteenth birthday of each resident in a facility, the
- 12 resident shall be evaluated by the facility for the purpose of determining whether he is competent
- 13 to execute an application for voluntary admission.
- Section 125. That § 27B-6-5 be repealed.
- 15 27B-6-5. If it is determined by the facility after evaluation pursuant to § 27B-6-4 that the
- 16 resident is not competent to execute an application for voluntary admission or that the resident
- otherwise requires the protective services of a guardian, the resident's parent, or if none, another
- 18 interested person or entity, shall be so notified and requested to file a petition for the
- 19 appointment of a guardian. If no petition is filed, the administrator shall inform the secretary of
- 20 human services.
- 21 Section 126. That § 27B-7-1 be repealed.
- 22 27B-7-1. A board of mental retardation may order the admission to a facility of an individual
- 23 who is mentally retarded and is not able, unassisted, to property manage or care for his person
- so as to make it necessary or advisable for him to be under care.
- Section 127. That § 27B-7-2 be repealed.

- 38 - SB 64

1 27B-7-2. Any person may file with a board of mental retardation a verified petition which

- 2 asserts that an individual meets the criteria for board-ordered admission as specified in
- 3 § 27B-7-1.
- 4 Section 128. That § 27B-7-3 be repealed.
- 5 27B-7-3. If a petition filed pursuant to § 27B-7-2 appears on its face to be sufficient, the
- 6 board of mental retardation shall order that the individual be examined and reports be prepared.
- 7 The board shall appoint a qualified person who may be an employee of the state or the county
- 8 to make the examination and to prepare a report containing the information required by
- 9 § 27B-7-6. The board shall give written notice of the petition to the department of human
- 10 services which shall prepare a report containing a review of the individual's service needs and a
- 11 recommendation as to appropriate service locations. The reports shall be filed within sixty days
- 12 from the receipt of the written notice from the board ordering the examination and reports.
- 13 Section 129. That § 27B-7-4 be repealed.
- 14 27B-7-4. If in the judgment of the board of mental retardation it becomes apparent that the
- 15 individual will not comply with an order of examination, the board may seek the assistance of a
- 16 peace officer to take the individual into protective custody and transport him to a facility or other
- 17 suitable place for the ordered examination. It will be procedural in these circumstances that no
- 18 record of arrest be charged against the individual.
- 19 Section 130. That § 27B-7-5 be repealed.
- 20 27B-7-5. After examination pursuant to § 27B-7-3 the individual shall be allowed to return
- 21 home unless in the judgment of the board of mental retardation he requires immediate admission
- 22 to a facility for the protection of himself or others pending the hearing, in which case the board
- 23 shall enter an order to that effect.
- Section 131. That § 27B-7-6 be repealed.
- 25 27B-7-6. The report required by § 27B-7-3 shall contain:

- 39 - SB 64

1	(1) Evaluations of the individual's mental, physical, social, and educational condition;
2	(2) A conclusion as to whether the individual meets the criteria for board-ordered
3	admission specified in § 27B-7-1;
4	(3) A list of available forms of care and treatment which may serve as an alternative to
5	admission to a facility;
6	(4) A recommendation as to the most appropriate living arrangement for the individual;
7	and
8	(5) The signatures of a physician or psychologist who performed an examination serving
9	in part as the basis of the report.
10	Section 132. That § 27B-7-7 be repealed.
11	27B-7-7. The petition shall be dismissed by the board of mental retardation unless a physician
12	or a psychologist concludes, and that conclusion is stated in the report, that the individual meets
13	the criteria for board-ordered admission.
14	Section 133. That § 27B-7-8 be repealed.
15	27B-7-8. Upon receipt of a petition and reports as provided for in §§ 27B-7-2 and 27B-7-3,
16	the board of mental retardation shall:
17	(1) Fix a date for a hearing within ten days, excluding Saturdays, Sundays and holidays
18	of the board receipt of the reports;
19	(2) Fix a place for a hearing, either in a facility or other convenient place, within or
20	without the county;
21	(3) Give five days written notice of the time and place of any hearing to the petitioner, to
22	the individual asserted to meet the criteria for board-ordered admission, to the
23	individual's attorney, to the prosecuting attorney or other attorney as specified in §
24	27B-7-10, to the administrator of any facility to which the individual is admitted, and
25	to the secretary of human services; and

- 40 - SB 64

1 (4) After the hearing, give copies of all orders to the persons identified in subdivision (3).

- 2 Section 134. That § 27B-7-9 be repealed.
- 3 27B-7-9. Hearings convened to determine whether an individual meets the criteria for
- 4 board-ordered admission shall be governed by §§ 27B-7-1 to 27B-7-16, inclusive, except that
- 5 they shall not perforce be applicable to the hearing provided for in §§ 27B-5-9 to 27B-5-14,
- 6 inclusive.
- 7 Section 135. That § 27B-7-10 be repealed.
- 8 27B-7-10. The state's attorney of the county in which a board of mental retardation is
- 9 meeting shall participate, either in person or by assistant, in hearings convened by the board of
- 10 his county under this chapter, except that a state's attorney need not participate in or be present
- at a hearing whenever a petitioner or some other appropriate person has retained private counsel
- who will be present before the board and will present to the board the evidence for a finding that
- the individual meets the criteria for board-ordered admission.
- Section 136. That § 27B-7-11 be repealed.
- 15 27B-7-11. The individual asserted to meet the criteria for board-ordered admission shall be
- 16 represented by counsel, such representation not being subject to waiver, and is entitled:
- 17 (1) To be present at the hearing;
- 18 (2) To obtain a continuance in order to adequately prepare a case;
- 19 (3) To present documents and witnesses;
- 20 (4) To cross-examine witnesses;
- 21 (5) To require testimony in person from one physician or one psychologist who has
- 22 personally examined him as provided in §§ 27B-7-3 and 27B-7-6; and
- 23 (6) To waive the hearing, in which case the board of mental retardation may make a
- 24 finding of fact and judgment based upon the written and other evidence before it.
- Section 137. That § 27B-7-12 be repealed.

- 41 - SB 64

- 1 27B-7-12. Counsel appointed for an individual pursuant to this title shall be compensated in
- 2 a reasonable and just manner for such services and for necessary expenses and costs incident to
- 3 the proceedings in an amount to be fixed by the circuit judge. The costs described shall be
- 4 allowed and paid out of the county mental retardation fund by the county treasurer or, if there
- 5 is not a sufficient amount in said fund, they may be paid out of the general fund.
- 6 Section 138. That § 27B-7-13 be repealed.
- 7 27B-7-13. If the board of mental retardation finds that an individual does not meet the
- 8 criteria for board-ordered admission, the board shall enter a finding to that effect, shall dismiss
- 9 the petition, and shall direct that the individual be discharged if he has been admitted to a facility
- 10 prior to the hearing.
- 11 Section 139. That § 27B-7-14 be repealed.
- 12 27B-7-14. Prior to ordering a course of care and treatment pursuant to § 27B-7-15, the
- 13 board of mental retardation shall consider ordering a course of care and treatment which is an
- 14 alternative to admission to a facility. To that end the board shall review the report submitted to
- 15 it pursuant to § 27B-7-3.
- Section 140. That § 27B-7-15 be repealed.
- 17 27B-7-15. If the individual is found to meet the criteria for admission, the board of mental
- 18 retardation may order the individual to:
- 19 (1) Be admitted to a facility designated by the department of human services;
- 20 <u>(2)</u> Be admitted to any facility or private treatment center;
- 21 (3) Be placed under the control and care of the department of human services for
- 22 placement in appropriate programs; or
- 23 (4) Receive care and treatment other than admission to a facility for a period of one year.
- Section 141. That § 27B-7-16 be repealed.
- 25 27B-7-16. If the board of mental retardation finds that a program of care and treatment other

- 42 - SB 64

1 than admission to a facility is adequate to meet the individual's care and treatment needs, the

- 2 board shall order the individual to receive whatever care and treatment is appropriate pursuant
- 3 to § 27B-7-15.
- 4 Section 142. That § 27B-7-17 be repealed.
- 5 27B-7-17. A person providing alternative care and treatment to an individual pursuant to
- 6 § 27B-7-15 may terminate the alternative care and treatment to an individual whom the provider
- 7 thereof deems suitable for discharge and shall terminate the alternative care and treatment when
- 8 the individual no longer meets the criteria for board-ordered admission.
- 9 Upon termination of alternative care and treatment, the board shall be so notified by the
- 10 provider thereof.
- Section 143. That § 27B-7-18 be repealed.
- 12 27B-7-18. If at any time during the one-year period, provided for in subdivision (4) of
- 13 § 27B-7-15, it comes to the attention of the board of mental retardation either that an individual
- ordered to undergo a program of alternative care and treatment is not complying with the order
- or that the alternative care and treatment is not sufficient, the board may without a hearing and
- 16 based upon the record and other available information:
- 17 (1) Consider other alternatives to admission to a facility, modify its original order, and
- 18 direct the individual to undergo another program of alternative care and treatment for
- 19 the remainder of the one-year period; or
- 20 <u>(2) Enter a new order pursuant to § 27B-7-15 directing the individual be admitted to a</u>
- facility. If the individual refuses to comply with this order, the board may direct a
- 22 peace officer to take the individual into protective custody and transport him to that
- 23 facility.
- Section 144. That § 27B-7-19 be repealed.
- 25 27B-7-19. The Department of Social Services may not order the admittance of an individual

- 43 - SB 64

to the Redfield Developmental Center.

1

- 2 Section 145. That § 27B-7-20 be repealed.
- 3 27B-7-20. Prior to ordering the admission of an individual, the board of mental retardation
- 4 shall inquire into the adequacy of care and treatment to be provided to the individual by the
- 5 facility to which the individual is to be admitted. Admission may not be ordered unless the facility
- 6 can provide the individual with care and treatment which is adequate and appropriate to the
- 7 individual's condition. No mentally retarded person may be admitted to the Redfield
- 8 Developmental Center on civil commitment if suitable services and programs are available in the
- 9 individual's community.
- Section 146. That § 27B-7-21 be repealed.
- 11 27B-7-21. Preference between a state facility and other community centers shall be given to
- 12 the facility which is located nearest to the individual's residence, except when the individual
- 13 requests otherwise or there are other compelling reasons for an order reversing the preference.
- Section 147. That § 27B-7-22 be repealed.
- 15 27B-7-22. The administrator of a facility shall discharge a resident admitted by a board order
- when the resident no longer meets the criteria for board-ordered admission. The administrator
- 17 shall notify the county board of mental retardation and the county auditor of the discharge.
- Section 148. That § 27B-7-23 be repealed.
- 19 27B-7-23. If, upon the discharge of an individual admitted by board of mental retardation
- 20 order or termination of alternative care and treatment to an individual receiving care and
- 21 treatment pursuant to § 27B-7-15, it is determined that he would benefit from the receipt of
- 22 further care and treatment, the facility or provider of alternative care and treatment may offer
- 23 appropriate care and treatment to him on an outpatient basis, or may aid him to obtain care and
- 24 treatment from another source.
- 25 Section 149. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read

- 44 - SB 64

as follows:

1

2

3

4

5

6

7

8

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Each county shall form a county review board which shall hear involuntary commitment hearings and review continued commitments of persons with developmental disabilities in accordance with sections 162 and 164 of this Act. The county review board shall consist of two people appointed by the board of county commissioners for a three-year term and a magistrate judge or lawyer appointed by the presiding circuit judge of the circuit in which the county is situated. The two members appointed by the county commission shall be residents of the county. The member appointed by the presiding circuit judge need not be a resident of the county. The members of the county review board who are appointed by the board of county commissioners may be appointed to more than one term, but may not serve more than two consecutive terms. The law-trained magistrate or lawyer shall serve as the chair of the county review board. The state's attorney for the county may not serve on the county review board. Each appointing authority may also appoint alternates. Pursuant to chapter 1-24, two or more counties may jointly contract to establish a county review board to serve all contracting counties. Section 150. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read as follows: Before entering upon the duties of office, each member of a county review board shall take and subscribe an oath or affirmation to support the Constitution of the United States and the Constitution of this state, and to discharge faithfully all official duties according to law, which oath shall be filed in the office of the county auditor. Section 151. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read as follows: The county review board has jurisdiction over all applications or petitions for involuntary

commitment or for the safekeeping of persons subject to involuntary commitment within its

county, except in cases otherwise specially provided for. The board may issue subpoenas and

- 45 - SB 64

1 compel obedience thereto, and do any act of a court necessary and proper for the purpose of

- 2 discharging the duties required of it.
- 3 Section 152. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
- 4 as follows:
- 5 Any interested person may file with the chairperson of the county review board a verified
- 6 petition which asserts that a person meets the criteria for board-ordered commitment as specified
- 7 in section 162 of this Act. If any person is alleged to have a developmental disability and to be
- 8 in such condition that immediate intervention is necessary for the protection from the physical
- 9 harm of self or others, any person, eighteen years of age or older, may petition the chairperson
- of the county review board where such person with an alleged developmental disability is found,
- stating the factual basis for concluding that such person is developmentally disabled and in
- immediate need of intervention. The petition shall be upon a form and be verified by affidavit.
- 13 The petition shall include the following:
- 14 (1) A statement by the petitioner that the petitioner believes, on the basis of personal
- knowledge, that such person is a danger to self or others;
- 16 (2) The specific nature of the danger;
- 17 (3) A summary of the information upon which the statement of danger is based;
- 18 (4) A statement of facts which caused the person to come to the petitioner's attention;
- 19 (5) The address and signature of the petitioner and a statement of the petitioner's interest
- in the case; and
- 21 (6) The name of the person to be evaluated, the address, age, marital status, and
- occupation of the person, and the name and address of the person's nearest relative.
- 23 Section 153. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
- 24 as follows:
- 25 If a petition filed pursuant to section 152 of this Act appears on its face to be sufficient, the

- 46 - SB 64

1 chairperson of the county review board shall order that a psychiatric or psychological evaluation

- 2 be performed and a report of the findings and recommendations be completed. The board shall
- 3 appoint a licensed psychologist or psychiatrist to make the examination and to prepare a report
- 4 within five working days from the date the petition is filed, containing the information required
- 5 in section 156 of this Act. If it appears, based upon the foregoing evaluation, the criteria for
- 6 commitment is met, a copy of the report shall be provided to Department of Human Services.
- 7 If the person desires an independent psychiatric or psychological evaluation, the person may
- 8 obtain one at that person's own expense.
- 9 Section 154. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
- 10 as follows:
- The chairperson of the county review board shall give written notice of the petition to the
- 12 Department of Human Services which shall prepare a report containing a review of the person's
- supports and service needs and a recommendation as to appropriate service locations. The
- reports shall be filed with the county review board within forty-five calendar days from receipt
- of the written notice from the board ordering the examination and report.
- Section 155. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
- 17 as follows:
- 18 If requested, information shall be disclosed:
- 19 (1) Pursuant to orders or subpoenas of a court of record or subpoenas of the Legislature
- or chairperson of the county review board;
- 21 (2) To a prosecuting or defense attorney or to a qualified mental retardation professional
- as necessary for participation in a proceeding governed by this title;
- 23 (3) To an attorney representing a person who is presently subject to the authority of this
- 24 title or who has been discharged when that person has given consent;
- 25 (4) If necessary in order to comply with another provision of law;

- 47 - SB 64

1	(5)	To the Department of Human Services if the information is necessary to enable the	
2		Department of Human Services to discharge a responsibility placed upon it by law;	
3		or	
4	(6)	To a states attorney or the attorney general for purpose of investigation of an alleged	
5		criminal act either committed by or upon a person with a developmental disability.	
6	Section	on 156. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read	
7	as follows:		
8	The r	report required by section 153 of this Act shall contain:	
9	(1)	Evaluations of the person's mental, physical, and emotional status, and review of	
10		social and educational history; and	
11	(2)	A statement as to whether the person meets the criteria for board-ordered	
12		commitment specified in section 162 of this Act.	
13	Section	on 157. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read	
14	as follow	s:	
15	If the	county review board finds that a person meets the criteria in section 162 of this Act,	
16	the board	shall enter a finding, based on the criteria in § 28-13-3, of the county of residence of	
17	the perso	n or a finding that the person is a nonresident of this state.	
18	Section	on 158. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read	
19	as follows:		
20	Upon	receipt of a petition and reports as provided for in sections 152, 153, and 156 of this	
21	Act, the	chairperson of the county review board shall:	
22	(1)	Fix a date, time, and place for a hearing within five days, excluding Saturdays,	
23		Sundays, and holidays, of the board's receipt of the reports;	

Provide five days written notice, excluding Saturdays, Sundays, and holidays, of the

time, date, and place of the hearing to the petitioner, to the person alleged to meet the

(2)

24

25

- 48 - SB 64

1	criteria for board-ordered commitment, to the psychologist or psychiatrist completi	ing	
2	the report, to the person's attorney, or other attorney as specified in section 160	of	
3	this Act, to the director of any facility in which the person is being served, and to t	the	
4	secretary of the Department of Human Services; and		
5	(3) Following the hearing, provide copies of all orders to the persons identified	in	
6	subdivision (2).		
7	Section 159. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read		
8	as follows:		
9	Hearings convened to determine whether a person meets the criteria for board-ordered		
10	commitment shall be governed by sections 152 to 168, inclusive, of this Act.		
11	Section 160. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read		
12	as follows:		
13	The state's attorney of the county in which a county review board is meeting shall participa	ıte.	
14	either in person or by assistant, in hearings convened by the board under this chapter.		
15	Section 161. That chapter 27B-7 be amended by adding thereto a NEW SECTION to re	ead	
16	as follows:		
17	The petition shall be dismissed by the chairperson of the county review board unless t	the	
18	evaluating psychiatrist or psychologist concludes, in writing, that the person meets the crite	ria	
19	for board-ordered commitment. If the county review board finds that a person does not meet t	the	
20	criteria for board-ordered commitment, the board shall enter a finding to that effect, shall dism	iiss	
21	the petition, and shall direct that the person be immediately discharged if the person has be	een	
22	detained prior to the hearing.		
23	Section 162. That chapter 27B-7 be amended by adding thereto a NEW SECTION to re	ead	
24	as follows:		

A county review board may order the involuntary commitment of a person with a

25

- 49 - SB 64

developmental disability who poses a danger of physical injury to self or others making it

- 2 necessary or advisable to receive appropriate supports and services. If the person is found to
- 3 meet the criteria for involuntary commitment, the county review board may order the person to
- 4 be placed under the control and care of the Department of Human Services for placement in
- 5 appropriate programs. If the person refuses to comply with this order, the board may direct a
- 6 peace officer to take the person into protective custody.
- 7 Section 163. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
- 8 as follows:
- 9 The county review board may issue a detention order and direct a peace officer to
- immediately take the person to a community service provider or facility recommended by the
- 11 Department of Human Services, with the approval of the provider, to be detained for purposes
- of an examination if the county review board finds from the petition, from other statements under
- oath, or from reports of physicians, psychiatrists, psychologists, or other qualified mental
- retardation professionals that there is reasonable basis to believe that the person to be committed
- poses an immediate danger of physical injury to self or others.
- If the county review board issues a detention order based on a petition that did not include
- a recommendation for detention by a psychiatrist or psychologist, the person shall be examined
- by a psychiatrist or psychologist within forty-eight hours of the issuance of the detention order,
- 19 excluding Saturdays, Sundays, and legal holidays. The results shall be reported to the county
- 20 review board. If the report is not received by the county review board within forty-eight hours,
- 21 excluding Saturdays, Sundays, and legal holidays, the person shall be released from placement
- 22 with the community service provider. The report shall include:
- 23 (1) Whether the person may be diagnosed as having a developmental disability;
- 24 (2) Whether the person is capable of giving informed consent and whether the person has
- agreed to voluntary admission;

- 50 -SB 64

1 (3) Whether supports and services are available and appropriate in lieu of county review 2 board proceedings; and

3

4

11

13

14

15

16

17

18

19

20

21

22

23

24

25

- (4) Whether the person continues to pose an immediate danger of physical injury to self or others.
- 5 Upon receipt of the report by the county review board, if it is determined that the person 6 continues to pose an immediate danger of physical injury to self or others, placement with a 7 community service provider shall continue while the commitment process is pending. If the 8 person does not continue to pose an immediate danger of physical injury to self or others, the 9 person shall be released from placement with the community service provider pending further 10 proceedings. No record of arrest may be charged against the person.
- Section 164. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read 12 as follows:

The county review board shall review the commitment order and accompanying information on at least an annual basis to make a determination of the continued need and supporting justification for commitment. Prior to the annual review, the developmental disability community service provider shall provide information to the county review board that issued the original commitment order regarding the person's supports, services, and progress. Following ten days notice to the person, the person's attorney, and the Department of Human Services, the county review board shall hold a review hearing. The review hearing shall include participation by the state's attorney, Department of Human Services, the community service provider, and the person's attorney. The rights and procedures applicable during an initial commitment hearing are applicable to review hearings. A petition pursuant to section 59 of this Act need not be filed. At the conclusion of the review hearing, the county review board may issue an order of continued commitment or immediately discharge the person from involuntary commitment if the conditions in section 162 of this Act justifying commitment no longer exist.

- 51 - SB 64

Section 165. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read

- 2 as follows:
- The Department of Human Services shall notify the chairperson of the county review board
- 4 of the death of any person with a developmental disability committed by the review board.
- 5 Section 166. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
- 6 as follows:
- 7 The person alleged to meet the criteria for board-ordered commitment shall be represented
- 8 by counsel, such representation not being subject to waiver, and is entitled:
- 9 (1) To be present at the hearing;
- 10 (2) To obtain a continuance in order to adequately prepare a case;
- 11 (3) To present documents and witnesses;
- 12 (4) To cross-examine witnesses; and
- 13 (5) To require testimony in person from the psychiatrist or psychologist who performed
- the evaluation required in section 153 of this Act.
- 15 Section 167. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
- 16 as follows:
- 17 Counsel appointed for a person pursuant to this title shall be reasonably compensated for
- such services and for necessary expenses and costs incident to the proceedings in an amount to
- be fixed by the circuit judge. The costs described shall be allowed and paid out of county funds
- and may not be assessed against the person with a developmental disability.
- 21 Section 168. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
- as follows:
- Costs of proceedings pursuant to this title, including costs for transportation and any
- 24 incidental costs of the person with a developmental disability, shall be reasonably compensated
- in an amount to be determined by the county auditor. The costs described shall be allowed and

- 52 - SB 64

paid for out of county funds and may not be assessed against the person with a developmental

- 2 disability.
- 3 Section 169. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
- 4 as follows:
- No person is incompetent to manage his or her affairs, to contract, to hold professional or
- 6 occupational or vehicle operator's licenses, to marry and obtain a divorce, to register and vote,
- 7 or to make a will solely by reason of a diagnosis of a developmental disability, or by reason of
- 8 a commitment by a county review board.
- 9 Section 170. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
- 10 as follows:
- A person may within thirty days appeal a final order of a county review board pursuant to
- any hearing or review conducted under this title. In the case of a minor, or a person for whom
- a guardian has been appointed, such right to appeal may be exercised on behalf of the person.
- 14 The person shall be advised both verbally and in writing of this right at the conclusion of any
- proceedings. The appeal shall be conducted in accordance with the provisions of chapter 1-26.
- Section 171. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
- 17 as follows:
- Upon exhaustion of all administrative remedies, a person has the right to file an appeal in the
- appropriate circuit court pursuant to chapter 1-26.
- Section 172. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
- 21 as follows:
- Any person involuntarily committed by a county review board and any person confined or
- 23 in any manner detained or restrained is entitled to the benefit of a writ of habeas corpus. If the
- court finds that the criteria in section 162 of this Act are met, the court may authorize continued
- 25 involuntary commitment. Such authorization is not a bar to the issuing of the writ the second

- 53 - SB 64

- time if it is alleged that the criteria in section 162 of this Act are no longer met.
- 2 Section 173. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
- 3 as follows:
- The secretary of the Department of Human Services may, pursuant to chapter 1-26, adopt
- 5 reasonable and necessary rules to carry out the duties of the department as assigned by law.
- 6 Section 174. That § 27B-8-1 be repealed.
- 7 27B-8-1. The individual privacy and dignity of each person affected by this title shall be
- 8 respected at all times and upon all occasions, including any occasion when the person is taken
- 9 into custody, detained or transported in accordance with the provisions of this title.
- Section 175. That § 27B-8-2 be repealed.
- 27B-8-2. Any person in a facility, if otherwise qualified, shall have the right to:
- 12 (1) Refuse drugs, electric shock, insulin shock, psychosurgery, to participate in any
- research projects, work for the institution, or be photographed or fingerprinted;
- 14 (2) Remain silent and fully clothed;
- 15 (3) Be allowed access to toilet facilities upon request, to have limited access to his own
- 16 money unless a conservator has been appointed and keep as much money in his
- personal possession as he deems necessary, to purchase personal articles such as
- variety store items, and at least two hours of physical exercise each day;
- 19 (4) Receive any visitors during regular visiting hours, send and receive uncensored and
- 20 unopened mail and be given adequate writing paper, pencils, envelopes and stamps,
- 21 and have access to a telephone between the hours of 9:00 a.m. and 8:00 p.m. Local
- 22 calls shall be allowed without charge and the person shall be allowed long distance
- 23 calls if he is able to pay the institution for them or can charge them to another number;
- 24 (5) Be given a copy of the statutes under which he is being held upon request; and apply
- 25 for habeas corpus and be given detailed written instructions on how to apply therefor;

- 54 - SB 64

1 Wear his own clothes and keep his own toilet articles, and have adequate storage 2 space for his personal effects; and (7) Vote, and hold a driver's license. 3 4 Reasonable limitations may be placed on these rights if each limitation is essential in order to prevent the resident from violating a law or to prevent substantial and serious physical or 5 mental harm to the resident or other residents, and if each limitation is documented in the 6 7 patient's record and approved by the administrator or his designee. 8 Section 176. That § 27B-8-3 be repealed. 9 27B-8-3. A written copy of the rights contained in § 27B-8-1 shall be distributed to every 10 person admitted to a facility and shall also be prominently displayed on every ward. 11 Section 177. That § 27B-8-4 be repealed. 12 27B-8-4. Nothing in this title shall prevent the filing of or deprive any individual of the 13 benefits of a writ of habeas corpus. All persons confined or in any manner detained as mentally 14 retarded shall be entitled to the writ, and the question of mental retardation shall be decided at 15 the hearing. 16 Section 178. That § 27B-8-5.1 be repealed. 17 27B-8-5.1. Except for behavior modification programs provided for in § 27B-8-5.5, the use 18 of physical restraints on residents in state institutions for the mentally retarded is governed by 19 the following: 20 (1) The facility may allow the use of physical restraint on a resident only if absolutely 21 necessary to protect the resident from injuring himself or others or as part of an 22 approved behavioral program; 23 The facility may not use physical restraint as punishment, for the convenience of the 24 staff, or as a substitute for activities or treatment;

The facility must have a written policy that specifies how and when physical restraint

25

- 55 - SB 64

1	may be used, the staff members who must authorize its use and the method for
2	monitoring and controlling its use;
3	(4) An order for physical restraint may not be in effect longer than twelve hours;
4	(5) Appropriately trained staff must check a resident placed in physical restraint at least
5	every thirty minutes and must keep a record of these checks; and
6	(6) A resident who is in a physical restraint must be given an opportunity for exercise and
7	motion for a period of not less than ten minutes during each two hours of restraint.
8	Section 179. That § 27B-8-5.2 be repealed.
9	27B-8-5.2. Mechanical devices used for physical restraint shall be designed and used in a way
10	that causes the resident no physical injury and the least possible physical discomfort. For
11	purposes of this section, a totally enclosed crib or barred enclosure is physical restraint, while
12	mechanical supports used to achieve proper body positions and balance are not physical
13	restraints.
14	Section 180. That § 27B-8-5.3 be repealed.
15	27B-8-5.3. The facility may not use chemical restraint excessively, as punishment, for the
16	convenience of staff or as a substitute for activities or treatment.
17	Section 181. That § 27B-8-5.4 be repealed.
18	27B-8-5.4. Terms used in §§ 27B-8-5.5 to 27B-8-5.7, inclusive, mean:
19	(1) "Aversive stimuli," things or events that the resident finds unpleasant or painful that
20	are used to immediately discourage undesired behavior;
21	(2) "Time out," a procedure designed to improve a resident's behavior by removing
22	positive reinforcement when his behavior is undesirable.
23	Section 182. That § 27B-8-5.5 be repealed.
24	27B-8-5.5. Behavior modification programs involving the use of aversive stimuli or time out

25

devices shall be:

- 56 - SB 64

- 1 (1) Reviewed and approved by the Human Rights Committee;
- 2 (2) Conducted only with the consent of the affected resident's parents or guardian; and
- 3 (3) Described in written plans that are kept on file.
- 4 Section 183. That § 27B-8-5.6 be repealed.
- 5 27B-8-5.6. A physical restraint used as a time out device may be applied only during
- 6 behavior modification exercises and only in the presence of the programmer.
- 7 Section 184. That § 27B-8-5.7 be repealed.
- 8 27B-8-5.7. For time out purposes, time out devices and aversive stimuli may not be used for
- 9 longer than one hour, and then only during the behavior modification program and only under
- 10 the supervision of the programmer.
- 11 Section 185. That § 27B-8-6 be repealed.
- 12 27B-8-6. Subject to reasonable rules of the facility, each resident in a facility shall have the
- 13 right to communicate freely and privately with persons residing outside the facility by mail,
- 14 telephone and in person unless such communication is limited, in writing, with the approval of
- 15 the administrator because such limitation is essential to prevent substantial and serious physical
- 16 or mental harm to the resident.
- 17 Section 186. That § 27B-8-7 be repealed.
- 18 27B-8-7. A resident shall be able to communicate with his attorney or private physician
- 19 without limitations subject to the facilities' normal access restrictions.
- Section 187. That § 27B-8-8 be repealed.
- 21 27B-8-8. Religious services shall be made available to residents on a voluntary basis in
- 22 accordance with their needs, desires and capabilities and also in accordance with their basic right
- 23 of freedom of religion.
- Section 188. That § 27B-8-9 be repealed.
- 25 27B-8-9. A medical examination by a licensed physician shall be made within forty-eight

- 57 - SB 64

1 hours, excluding Saturdays, Sundays and holidays, of a resident's admission to a facility. A

- 2 psychological and intellectual evaluation shall be made within seventy-two hours after admission,
- 3 if such examination has not previously been made.
- 4 Section 189. That § 27B-8-10 be repealed.
- 5 27B-8-10. Within one month after a resident's admission to a facility, a qualified
- 6 developmental disabilities professional shall:
- 7 (1) Review and update the preadmission evaluation;
- 8 (2) Make a prognosis that can be used for programming and placement;
- 9 Give a comprehensive evaluation; and
- 10 (4) Formulate an individual habilitation plan as provided in § 27B-8-11.
- 11 Section 190. That § 27B-8-11 be repealed.
- 12 27B-8-11. Each resident shall have the right to the implementation of an individualized
- 13 habilitation program which includes establishment, maintenance, and implementation of those
- 14 programs that will ensure the optimal development or restoration of him physically,
- 15 psychologically, socially, and vocationally. Specific habilitation services shall focus on the
- 16 maximum achievement of self-help skills, social confidence including communication skills,
- 17 vocational confidence and independent living. A habilitation program shall not consist solely of
- 18 chemical or drug therapy.
- 19 Section 191. That § 27B-8-12 be repealed.
- 20 <u>27B-8-12</u>. Each resident shall have the right to a comprehensive individualized program for
- 21 education and training. Educational services shall be available to all residents regardless of
- 22 chronological age, degree of handicapping condition, or accompanying disabilities or handicaps.
- Section 192. That § 27B-8-13 be repealed.
- 24 27B-8-13. Each resident shall have the right to physical and occupational therapy services
- 25 in order to facilitate his optimal development and enable him to be a contributing and

- 58 - SB 64

- 1 participating member of society.
- 2 Section 193. That § 27B-8-14 be repealed.
- 3 27B-8-14. Each resident shall have the right to the least restrictive setting for his treatment.
- 4 Section 194. That § 27B-8-15 be repealed.
- 5 27B-8-15. Every resident admitted by board of mental retardation order shall have an annual,
- 6 adequate review of his current status as a person meeting the criteria for board-ordered
- 7 admission. The review shall be conducted by all relevant personnel including the staff working
- 8 within his living unit. This review shall include a review of:
- 9 (1) The resident's need for remaining in the facility;
- 10 (2) Consideration of the advisability of a less restrictive setting for treatment;
- 11 (3) The need for guardianship of the resident; and
- 12 (4) Restrictions imposed on the resident's legal rights.
- Section 195. That § 27B-8-16 be repealed.
- 14 27B-8-16. The results of each periodic review pursuant to § 27B-8-15 shall be made part of
- 15 the resident's record, and shall be filed within five days of the review in the form of a written
- 16 report with the board of mental retardation which ordered the resident's admission, and within
- said five days, notice of the results of the review shall be given by the facility to the resident, his
- 18 attorney, if any, and his nearest relative or guardian.
- 19 Section 196. That § 27B-8-17 be repealed.
- 20 27B-8-17. If the report prepared pursuant to § 27B-8-16 concludes that the resident
- 21 continues to meet the criteria for board-ordered admission, and the resident or someone on his
- 22 behalf objects to that conclusion, he shall have the right to a hearing and all other rights
- 23 expressed or implied in §§ 27B-7-12 to 27B-7-23, inclusive, and § 27B-8-24, and may petition
- 24 the board of mental retardation for discharge. The petition for discharge shall be presented to the
- 25 chairman of the board or a representative of the facility within seven days, excluding Sundays

- 59 - SB 64

and holidays, after the report is received. If the petition is presented to a representative of the

- 2 facility, he shall transmit it to the board forthwith.
- 3 Section 197. That § 27B-8-18 be repealed.
- 4 27B-8-18. Each patient shall have the right to be protected from physical injury and shall
- 5 receive prompt, adequate medical treatment for any physical illness or injury he may incur.
- 6 Section 198. That § 27B-8-19 be repealed.
- 7 27B-8-19. Surgery and any other medical procedures may be preformed without consent or
- 8 court order only if the life of the resident is threatened and there is not time to obtain consent or
- 9 a court order. Documentation of the necessity for the surgery shall be entered into the record of
- 10 the resident as soon as practicable.
- 11 Section 199. That § 27B-8-20 be repealed.
- 12 27B-8-20. Patients shall not be the subject of experimental research, any hazardous
- procedure, surgery, or electroconvulsive therapy unless informed consent is obtained from:
- 14 (1) The resident, if he is eighteen years of age or over and competent to consent;
- 15 (2) The guardian of the resident, if the guardian is legally empowered to execute such
- 16 consent; or
- 17 (3) The parent of the resident, if the resident is less than eighteen years of age.
- 18 If psychosurgery or electroconvulsive therapy or any other procedure intended to produce
- 19 convulsions or coma is deemed advisable for the resident and no one eligible to consent can be
- 20 found after diligent effort, the circuit court may upon petition and after hearing consent to the
- 21 performance of the procedure.
- Section 200. That § 27B-8-21 be repealed.
- 23 27B-8-21. No resident may be the subject of any experimental research or hazardous
- 24 procedure unless such research or procedure shall be approved and conducted in the manner
- 25 prescribed by the secretary of human services.

- 60 - SB 64

- 1 Section 201. That § 27B-8-22 be repealed.
- 2 27B-8-22. Nothing in this Title or in any rule or regulation adopted pursuant thereto shall
- 3 be construed to deny treatment by spiritual means through prayer for any person detained for
- 4 evaluation or treatment who desires such treatment, or to a minor if his parent or guardian
- 5 desires such treatment but not in conflict with § 27A-12-3.1.
- 6 Section 202. That § 27B-8-23 be repealed.
- 7 27B-8-23. A resident may perform labor which contributes to the operation and the
- 8 maintenance of the facility for which the facility would otherwise employ someone only if the
- 9 resident voluntarily agrees to perform the labor and he is compensated appropriately and in
- 10 accordance with all applicable state and federal labor laws, or if such labor is required as an
- 11 integral part of therapy in an individualized treatment plan.
- 12 In no event shall discharge or privileges be conditioned upon the performance of any such
- 13 labor.
- Section 203. That § 27B-8-24 be repealed.
- 15 27B-8-24. All leaves or absences from a facility other than release or discharge shall be
- 16 governed by rules or procedures established by the facility; except that a resident who has been
- 17 admitted by a board of mental retardation order and who has been on an authorized leave or
- 18 absence from the facility for a continuous period of one year shall be discharged. Upon such
- 19 discharge, the board shall be notified by the facility.
- Section 204. That § 27B-8-25 be repealed.
- 21 27B-8-25. An individual is subject to being returned to a facility if he was admitted to a
- 22 facility on an application executed by someone other than himself or by board of mental
- 23 retardation order, and he has left the facility without authorization or has refused a lawful request
- 24 to return to the facility while on an authorized leave or other authorized absence from the facility.
- Section 205. That § 27B-8-26 be repealed.

- 61 - SB 64

- 1 27B-8-26. The facility may notify any law enforcement officers that an individual is subject
- 2 to being returned to the facility. Upon such notification, a law enforcement officer who
- 3 encounters the individual shall take him into protective custody and return him to the facility
- 4 unless contrary directions have been given by the facility.
- 5 Section 206. That § 27B-8-27 be repealed.
- 6 27B-8-27. A complete statistical and medical record shall be kept current for each resident
- 7 of a facility. The record shall, at least, include information pertinent to the services provided to
- 8 the resident, pertinent to the legal status of the resident, required by this chapter or other
- 9 provision of law, and required by rules or policies.
- Section 207. That § 27B-8-28 be repealed.
- 11 27B-8-28. Information in the record of a resident, and other information acquired in the
- 12 course of providing services to a resident, shall be kept confidential and shall not be open to
- 13 public inspection. The information may be disclosed outside the facility or licensed private
- treatment center only in the circumstances and under the conditions set forth in §§ 27B-8-29 to
- 15 27B-8-34, inclusive.
- Section 208. That § 27B-8-29 be repealed.
- 17 27B-8-29. If requested, information shall be disclosed:
- 18 (1) Pursuant to orders or subpoenas of a court of record, or subpoenas of the Legislature;
- 19 (2) To a prosecuting attorney as necessary for him to participate in a proceeding
- 20 governed by this Title;
- 21 (3) To an attorney for the resident, if the resident, or his guardian, has given consent;
- 22 (4) If necessary in order to comply with another provision of law; or
- 23 (5) To the departments of social services or human services when the information is
- 24 necessary to enable either department to discharge a responsibility placed upon it by
- 25 law.

- 62 - SB 64

- 1 Section 209. That § 27B-8-30 be repealed.
- 2 27B-8-30. If the holder of the record and the recipient and his parents if he is a minor, or his
- 3 guardian consent, information may be disclosed to providers of mental retardation services to
- 4 the resident; or the resident or any other person or agency, provided, that in the judgment of the
- 5 holder, the disclosure would not be detrimental to the recipient or others.
- 6 Section 210. That § 27B-8-31 be repealed.
- 7 27B-8-31. Information may be disclosed in the discretion of the holder of the record when
- 8 necessary for the resident to apply for or receive benefits, or necessary for the purposes of
- 9 evaluation and accreditations.
- Section 211. That § 27B-8-32 be repealed.
- 11 27B-8-32. Any release of information by the holder of the record shall be approved by the
- 12 administrator of the facility holding the records. The holder of the record shall be responsible for
- 13 keeping a record of what information was released, to whom, the dates of release and the
- 14 purpose for such release.
- Section 212. That § 27B-8-33 be repealed.
- 16 27B-8-33. When information is disclosed, the identity of the individual to whom it pertains
- shall be protected and shall not be disclosed unless it is germane to the authorized purpose for
- 18 which disclosure was sought; and, when practicable, no other information shall be disclosed
- 19 unless it is germane to the authorized purpose for which disclosure was made.
- Section 213. That § 27B-8-34 be repealed.
- 21 27B-8-34. Any person receiving information made confidential by § 27B-8-28 shall disclose
- 22 the information to others only to the extent consistent with the authorized purpose for which the
- 23 information was released.
- Section 214. That § 27B-8-35 be repealed.
- 25 27B-8-35. The rights enumerated in this title for the benefit of residents shall not be

- 63 - SB 64

1 construed as replacing or limiting any other rights, benefits or privileges afforded any person

- 2 pursuant to other provisions of law, the Constitution of South Dakota and the Constitution of
- 3 the United States.
- 4 Section 215. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read
- 5 as follows:
- 6 Unless modified by court order, a person with a developmental disability has the same legal
- 7 rights and responsibilities guaranteed to all other persons under the federal and state
- 8 constitutions and federal and state laws.
- 9 Section 216. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read
- 10 as follows:
- No person with a developmental disability may be required to perform any act or be subject
- to any procedure which is contrary to the person's religious beliefs, and each person has the right
- to practice personal religious beliefs and be accorded the opportunity for religious worship. No
- person may be coerced into engaging in or refraining from any religious activity, practice, or
- 15 belief.
- Section 217. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read
- 17 as follows:
- Every person with a developmental disability has the right to receive publicly supported
- 19 educational services in accordance with federal and state education laws.
- Section 218. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read
- 21 as follows:
- Every person with a developmental disability has the right to access to appropriate dental and
- 23 medical care and treatment for any physical ailments and for the prevention of illness or
- 24 disability.
- 25 Section 219. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read

- 64 - SB 64

- 1 as follows:
- 2 Surgery and any other medical procedures may be performed without consent or court order
- 3 only if the life of the person with a developmental disability is threatened and there is not time
- 4 to obtain consent or a court order. Documentation of the necessity for the surgery shall be
- 5 entered into the record of the person as soon as practicable.
- 6 Section 220. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read
- 7 as follows:
- 8 No person with a developmental disability is subject to any experimental research or
- 9 hazardous treatment procedures without the consent of:
- 10 (1) The person with a developmental disability, if eighteen years of age or over and
- capable of giving informed consent;
- 12 (2) The guardian of the person with a developmental disability, if the guardian is legally
- empowered to execute such consent; or
- 14 (3) The parent or guardian of the person with a developmental disability, if the person
- with a developmental disability is less than eighteen years of age.
- No person with a developmental disability who is subject to an order of guardianship may
- 17 be subjected to experimental research or hazardous treatment procedures without prior
- authorization of the circuit court.
- 19 Section 221. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read
- as follows:
- No person with a developmental disability may be sterilized without the person's informed
- 22 consent or court order as set out in this chapter.
- 23 Section 222. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read
- 24 as follows:
- No person with a developmental disability who is over eighteen years of age and has the

- 65 - SB 64

capacity to participate in the decision-making process regarding sterilization may be sterilized without that person's informed consent. No minor may be sterilized without a court order. Any person with a developmental disability over eighteen years of age who has given informed consent has the right to be sterilized, subject to the following:

- (1) Prior to the procedure, capacity to give informed consent and assurance that such consent is voluntarily and freely given shall be evaluated by:
 - (a) A psychiatrist, psychologist, or physician who does not provide services or supports to the person with a developmental disability, and who has consulted with and personally interviewed the person with a developmental disability; and
 - (b) A qualified mental retardation professional who does not provide services or supports in which the person participates, and who has consulted with and interviewed the person with a developmental disability;
- (2) The professionals who conducted the evaluation pursuant to subdivision (1) shall consult with the physician who is to perform the procedure concerning each professional's opinion in regard to the capacity of the person with a developmental disability to give informed consent regarding sterilization.

Any person with a developmental disability whose capacity to give informed consent is challenged by the qualified mental retardation professional or the physician may file a petition with the court to determine competency to give consent.

Section 223. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read as follows:

A person with a developmental disability who has been determined to be incompetent to give informed consent, the person's legal guardian, or the person's parent, if a minor, may petition the court for a hearing to determine whether consent for the sterilization procedure should be authorized. The petition shall set forth the following:

- 66 - SB 64

1	(1)	The name, age, and residence of the person with a developmental disability to be
2		sterilized;
3	(2)	The name, address, and relationship of the petitioner to the person with a
4		developmental disability;
5	(3)	The name and address of any parent, spouse, legal guardian, or custodian of the
6		person with a developmental disability;
7	(4)	The mental condition of the person with a developmental disability to be sterilized;
8	(5)	A statement by a physician and a psychologist or psychiatrist that the sterilization is
9		medically necessary to preserve the life or physical or mental health of the person with
10		a developmental disability, including a short and plain description of the reasons
11		behind the determination of medical necessity; and
12	(6)	A statement by a physician and a psychologist or psychiatrist that other less intrusive
13		measures were considered and the reasons behind the determination that less intrusive
14		means would not protect the interests of the person with a developmental disability.
15	Section	on 224. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read
16	as follow	s:
17	Prior	to authorizing the sterilization procedure, the court shall find by clear and convincing
18	evidence:	
19	(1)	That the person with a developmental disability lacks the capacity to effectively
20		participate in the decision-making process regarding sterilization, or is a minor with
21		a developmental disability;
22	(2)	That the court has heard from the person with a developmental disability regarding
23		that person's desires, if possible, and that the court has considered the desires of the
24		person with a developmental disability;
25	(3)	That the person with a developmental disability lacks the capacity to make an

- 67 - SB 64

1		informed decision regarding sterilization and that the person's capacity to make such
2		a decision is unlikely to improve in the future;
3	(4)	The person with a developmental disability is capable of reproduction and is likely to
4		engage in activities at the present or in the near future which could result in
5		pregnancy;
6	(5)	That a recommendation regarding the appropriateness and medical necessity of the
7		sterilization has been obtained from a physician and a psychologist or psychiatrist
8		neither of whom provide services to the person with a developmental disability, and
9		that these professionals have consulted with and interviewed the person with a
10		developmental disability;
11	(6)	That the sterilization is medically necessary to preserve the life or physical or mental
12		health of the person with a developmental disability, including a short and plain
13		description of the reasons behind the determination of medical necessity; and
14	(7)	That other less intrusive measures were considered and the reasons behind the
15		determination that less intrusive means would not protect the interests of the person
16		with a developmental disability.
17	Section	on 225. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read
18	as follow	rs:
19	The p	person with a developmental disability shall be represented by counsel throughout the
20	proceedii	ngs. Upon filing of the petition the court shall notify the person with a developmental
21	disability	of the right to counsel.
22	Section	on 226. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read
23	as follow	rs:
24	The o	cost of the proceedings to obtain a court order authorizing sterilization, including the

cost of counsel for the person with a developmental disability, is the responsibility of the

25

- 68 - SB 64

- 1 petitioner.
- 2 Section 227. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read
- 3 as follows:
- The receipt of services and supports pursuant to this chapter does not operate to deprive any
- 5 person with a developmental disability of any other rights, benefits, or privileges, does not cause
- 6 the person with a developmental disability to be declared legally incompetent, and may not be
- 7 construed to interfere with the rights and privileges of parents or guardians regarding their minor
- 8 child. No agency, facility, school, or person who receives public funds and provides services to
- 9 persons with developmental disabilities may engage in the following practices:
- 10 (1) Corporal punishment physical or verbal abuse, such as shaking, screaming, swearing,
- name calling, or any other activity that would be damaging to a person's physical
- well-being or self-respect;
- 13 (2) Seclusion placement of a person alone in a room or other area from which egress is
- 14 prevented;
- 15 (3) Denial of food preventing a person from having access to a nutritionally adequate
- diet as a means of modifying behavior.
- No person with a developmental disability receiving services may discipline other persons
- with developmental disabilities receiving services, and no community service provider may
- mistreat, exploit, neglect, or abuse any person with a developmental disability.
- Section 228. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read
- as follows:
- No community service provider may retaliate against any staff who reports in good faith
- 23 suspected abuse, neglect, or exploitation, or against any person with a developmental disability
- 24 with respect to any report. An alleged perpetrator cannot self-report solely for the purpose of
- 25 claiming retaliation. There exists a rebuttable presumption of retaliation for any adverse actions

- 69 - SB 64

- taken within ninety days of a report of abuse, neglect, or exploitation. Adverse action means only
- 2 those adverse actions arising solely from the filing of an abuse report. For the purposes of this
- 3 chapter, adverse action means any action taken by a community service provider against the
- 4 person making the report or against the person with a developmental disability because of the
- 5 report and includes:
- 6 (1) Discharge or transfer from the community service provider except for clinical reasons;
- 7 (2) Discharge from or termination of employment;
- 8 (3) Demotion or reduction in remuneration for services; or
- 9 (4) Restriction or prohibition of access to services and supports or the persons served.
- Section 229. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read
- 11 as follows:
- Any person who knowingly engages in conduct with the intent to deprive persons with
- developmental disabilities of any right as set forth in this title is guilty of a Class 1 misdemeanor.
- Section 230. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read
- as follows:
- Each person with a developmental disability receiving services has the right to:
- 17 (1) Communicate freely and privately with others of the person's own choosing;
- 18 (2) Receive and send sealed, unopened correspondence. No person's incoming or
- outgoing correspondence shall be opened, delayed, held, or censored by any person;
- 20 (3) Receive and send packages. No person's outgoing packages may be opened, delayed,
- 21 held, or censored by any person;
- 22 (4) Reasonable access to telephones, both to make and to receive calls in privacy, and
- reasonable and frequent opportunities to meet with visitors; and
- 24 (5) Suitable opportunities for interaction with persons of their own choice.
- 25 Section 231. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read

- 70 - SB 64

- 1 as follows:
- 2 All records kept pursuant to this chapter are confidential and not open to public inspection.
- 3 The information may be disclosed only in the circumstances and under the conditions set forth
- 4 in sections 232 to 234, inclusive, of this Act.
- 5 Section 232. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read
- 6 as follows:
- 7 If the community service provider or facility and the person with a developmental disability
- 8 and the person's parent, if a minor, or the person's guardian consent, information may be
- 9 disclosed to providers of supports and services to the person with a developmental disability, or
- 10 to the person with a developmental disability, or to any other person or agency, if, in the
- judgment of the community service provider or facility, the disclosure would not be detrimental
- to the person with a developmental disability.
- 13 Section 233. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read
- 14 as follows:
- 15 If information is disclosed, the identity of the person to whom it pertains shall be protected
- and may not be disclosed unless it is germane to the authorized purpose for which disclosure was
- sought. If practicable, no other information may be disclosed unless it is germane to the
- authorized purpose for which disclosure was made.
- 19 Section 234. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read
- as follows:
- 21 Any person receiving information made confidential by section 238 of this Act shall disclose
- the information to others only to the extent consistent with the authorized purpose for which the
- 23 information was released.
- Section 235. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read
- 25 as follows:

- 71 - SB 64

The rights of persons with developmental disabilities receiving services may only be restricted as a result of due process in accordance with statute and the rules of the Department of Human Services. The rights of any person with a developmental disability as specified in this chapter may be suspended to protect that person from endangering self or others. In order to provide specific services or supports to the person with a developmental disability, such rights may be suspended only by due process that will promote the least restriction on the person's rights.

Section 236. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read as follows:

The use of any highly restrictive procedures, including restraints and time-out, shall be described in written behavior intervention programs. Behavior intervention programs may only be implemented following the completion of a comprehensive functional analysis if alternative nonrestrictive procedures have been proven to be ineffective, and only with the informed consent of the person with a developmental disability or the person's parent or legal guardian. Behavior intervention programs shall be developed in conjunction with the interdisciplinary team and implemented in accordance with section 235 of this Act, in a manner that does not violate due process in accordance with section 235 of this Act.

Section 237. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read as follows:

Use of restraints shall be applied only in an emergency if alternative techniques have failed and only in conjunction with a behavior intervention program. Physical restraint intended to restrict the movement or normal functioning of a portion of a person's body through direct contact by staff, shall be employed only if necessary to protect the person with a developmental disability from immediate injury to self or others. Physical restraint may not be employed as punishment, for the convenience of staff, or as a substitute for a program of services and supports. Physical restraint shall be applied only after alternative techniques have failed and only

- 72 - SB 64

1 if such restraint is imposed in the least possible restriction consistent with its purpose.

- 2 Mechanical restraint using mechanical devices intended to restrict the movement or normal
- 3 functioning of a portion of a person's body is subject to special review and oversight, as defined
- 4 in department rules. Any mechanical restraint shall be designed and used so as not to cause
- 5 physical injury to the person with a developmental disability and so as to cause the least possible
- 6 discomfort. Chemical restraint and medication may not be used excessively, as punishment, for
- 7 the convenience of staff, as a substitute for a program, or in quantities that interfere with a
- 8 person's developmental program. In accordance with statute and the rules of the department, due
- 9 process shall be assured pursuant to section 235 of this Act for the use of physical, mechanical,
- or chemical restraints, including their use in an emergency or on a continuing basis.
- 11 Section 238. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read
- 12 as follows:
- Time out rooms used for separating a person with a developmental disability from other
- persons receiving services and group activities may be employed only under close and direct staff
- supervision and only as a technique in behavior intervention programs. Time-out rooms may not
- be used in emergency situations. Behavior intervention programs utilizing a time-out procedure
- may be implemented only if it incorporates a positive approach designed to result in the
- acquisition of adaptive behaviors.
- 19 Section 239. That § 27B-9-1 be repealed.
- 20 27B-9-1. Notwithstanding chapter 25-7, when any person is admitted to a facility only the
- 21 resident shall be liable for the cost of his care, support, maintenance, and treatment to the extent
- 22 and in the manner provided by this chapter. If the cost of the resident's care, support,
- 23 maintenance and treatment is a proper charge of the federal government, the costs shall be
- 24 assessed against the appropriate agency of the federal government.
- 25 Section 240. That § 27B-9-2 be repealed.

- 73 - SB 64

1 27B-9-2. The department of human services is responsible for the collection and processing

- 2 of fees due to the state for the care of patients in the facility.
- 3 Section 241. That § 27B-9-3 be repealed.
- 4 27B-9-3. The secretary of human services shall periodically determine the individual cost,
- 5 exclusive of the cost of education, for the care, support, maintenance, and treatment of the
- 6 patients in each facility. In making such determinations, the secretary may use averaging methods
- 7 for each facility if, in the secretary's judgment, it is not practicable to compute the cost for each
- 8 patient. The cost of capital expenditures and capital construction may not be included in making
- 9 such determinations.
- Section 242. That § 27B-9-4 be repealed.
- 11 27B-9-4. Any patient who is judged by the secretary of human services, subject to the
- 12 provisions for the method of investigation used by the department of human services as set down
- in §§ 27B-9-8 and 27B-9-9, to be financially able to pay the per diem rate on an indefinite basis,
- shall continue to be charged the per diem for each day of continuous patient status.
- 15 Section 243. That § 27B-9-8 be repealed.
- 16 27B-9-8. Any patient may apply to the secretary of human services for permission to pay less
- 17 than the applicable charge. On receipt of such application, the secretary shall request an
- 18 investigation, to determine the ability of the patient to pay all or a part of the applicable charge.
- 19 Consideration in such determination shall be given to the following factors, and such other
- 20 factors as the secretary shall agree are reasonable: net income, net worth, number of dependents,
- 21 and existing obligations. Additional investigation by the state department of human services of
- 22 the ability of the patient to pay may be required by the secretary of human services.
- Section 244. That § 27B-9-9 be repealed.
- 24 27B-9-9. Upon receipt of all information desired by the secretary of human services, the
- 25 secretary shall determine, based upon the financial ability of the patient, whether the patient shall

- 74 - SB 64

be charged with the full amount or a lesser amount. If a patient, or county where the patient

- resides, disagrees with the determination of the secretary, an appeal may be filed within thirty
- 3 days from the date the patient or responsible relative receives notice of such determination, for
- 4 a rehearing with the secretary. However, such an appeal may not be filed more than once each
- 5 six months.

2

- 6 Section 245. That § 27B-9-10 be repealed.
- 7 27B-9-10. The secretary of human services may review and change any determination for
- 8 applicable charges and may, if necessary, request further investigation by the state department
- 9 of human services.
- Section 246. That § 27B-9-11 be repealed.
- 11 27B-9-11. If a patient refuses or fails to make such payments, the charges may be collected
- by a civil suit brought in the name of the state of South Dakota. The state may sue such patient
- for payments due, and any judgment obtained shall be a lien upon the real property of such
- patient, and shall be collected as other judgments. Any claim arising under § 27B-9-1 has the
- same force and effect against the real and personal property of a deceased person as other debts
- of a decedent, and shall be ascertained and recovered in the same manner.
- 17 Section 247. That § 27B-9-13 be repealed.
- 18 27B-9-13. The statute of limitations upon any claim of the state for the care of a
- 19 developmentally disabled person shall not commence to run until the death of the
- 20 developmentally disabled person, but an action may be begun at any time during the life of the
- 21 developmentally disabled person.
- Section 248. That § 27B-9-16 be repealed.
- 23 27B-9-16. Each county shall be assessed sixty dollars per month for each individual served
- 24 by the Redfield Developmental Center unless the responsibility therefor has been placed upon
- 25 the state at large. In the event of a dispute as to a patient's residence, no payments made by any

- 75 - SB 64

1 county constitute an admission that the patient has residence within such county. The procedures

- 2 for determination of county of residence shall be that described in §§ 27B-9-19 to 27B-9-21,
- 3 inclusive. These moneys shall be used to match federal funds which may be made available under
- 4 the provisions of Title XIX of the Social Security Act as amended, or its successors, at the
- 5 Redfield Developmental Center.
- 6 Section 249. That § 27B-9-17 be repealed.
- 7 27B-9-17. If a mentally retarded person has been placed under the control of a child welfare
- 8 agency as defined by § 26-6-1 for adoption, and prior to adoption is found to be mentally
- 9 retarded, then the county board of mental retardation shall have the power to direct that the
- 10 expenses for the care, education and maintenance of such person be borne by the state at large
- in which event no finding as to the county legally obligated to support such person shall be made;
- 12 and then, said board shall forthwith notify the board of social services who may petition for
- 13 letters of guardianship.
- Section 250. That § 27B-9-19 be repealed.
- 15 27B-9-19. If the administrator of a facility has cared for or maintained a patient from a
- 16 county and the state's attorney or county commissioners of the county claim that the patient is
- 17 not a proper charge against the county, and notify the attorney general that the patient is a proper
- 18 charge against another county or against the state at large because the patient is not a resident
- of the state, the attorney general shall notify the county auditor of the county to file any proof
- 20 he may have within thirty days from the date of such notification. Thereupon the attorney general
- 21 shall investigate the location of the residence of the patient, to determine if and which county
- should be charged. The attorney general shall notify the county auditor and the administrator of
- 23 the human services center of the determination. Thereafter the administrator shall charge for
- 24 treatment according to the determination of the attorney general.
- Section 251. That § 27B-9-20 be repealed.

- 76 - SB 64

27B-9-20. If the attorney general shall find that such patient is not a proper charge against

- 2 any county in the state, such patient shall thereafter be regarded as a proper charge against the
- 3 state at large until returned to the state of his residence.
- 4 Section 252. That § 27B-9-21 be repealed.
- 5 27B-9-21. If any county shall be dissatisfied with the determination of the attorney general,
- 6 such county may appeal to the circuit court, serving a notice of appeal upon the attorney general
- 7 and upon one of the members of the board of county commissioners of the county adversely
- 8 interested, within thirty days from the date of such finding and thereupon it shall be the duty of
- 9 the circuit court to determine the residence of such patient and determine against what county
- 10 he is a proper charge, and such determination shall be conclusive unless an appeal shall be taken
- therefrom, in the manner provided by law for appeal in civil actions.
- Section 253. That § 27B-9-22 be repealed.
- 13 27B-9-22. Expenses paid by one county, on behalf of persons whose residence is in another
- county, shall be refunded with lawful interest thereon by the county of residence. The expenses
- and interest shall be presented to the board of commissioners of the county of residence and shall
- 16 be allowed and paid the same as other claims.
- 17 Section 254. That § 27B-9-23 be repealed.
- 18 27B-9-23. When the administrator of a facility has been duly notified that a patient sent to
- 19 the facility from one county has a residence in another county, he shall thereafter hold and keep
- 20 the patient as if he were from the latter county. Such holding shall apply to expenses already
- 21 incurred in behalf of such patient which remain unadjusted.
- Section 255. That § 27B-9-25 be repealed.
- 23 27B-9-25. It shall also be the duty of the administrator of the facility to furnish at once to the
- 24 chairman of the county board of mental retardation, the county auditor of each county wherein
- 25 the residence is found to be, and the guardian, if a child welfare agency, the name of each patient

- 77 - SB 64

- 1 discharged, whether recovered, paroled, or on visit, and also in the case of escape or death.
- 2 Section 256. That § 27B-9-26 be repealed.
- 3 27B-9-26. All charges to a county under § 27B-9-16 shall be certified each month by the
- 4 secretary of human services to the county auditor. The certification shall include a listing of
- 5 charges by patient name. The certification shall be sent to county auditors no later than the fifth
- 6 day of the month. Upon receiving the certification, the county shall pay the amount due to the
- 7 state remittance center within the time period established by chapter 4-3.
- 8 Section 257. That § 27B-9-27 be repealed.
- 9 27B-9-27. All payments made for the treatment and maintenance of residents in accordance
- 10 with this chapter, shall be deposited in the general fund.

- 78 - SB 64

1 **BILL HISTORY**

- 2 1/12/99 First read in Senate and referred to Health and Human Services. S.J. 27
- 3 1/20/99 Scheduled for Committee hearing on this date.
- 4 1/27/99 Scheduled for Committee hearing on this date.
- 5 1/27/99 Health and Human Services Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 205

State of South Dakota

SEVENTY-FOURTH SESSION LEGISLATIVE ASSEMBLY, 1999

624C0368

SENATE LOCAL GOVERNMENT COMMITTEE ENGROSSED NO. SB92 1/28/99

Introduced by: Senators Ham, Brosz, Dunn (Rebecca), Hainje, Hutmacher, Kleven, Lawler, Munson (David), Shoener, Valandra, and Whiting and Representatives Derby, Haley, Hennies, Munson (Donald), Peterson, Solum, Volesky, and Wilson

- 1 FOR AN ACT ENTITLED, An Act to authorize the formation of library districts and to 2 authorize the levy of a tax to fund their operations. 3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA: 4 Section 1. If the landowners in any rural territory request to form, organize, establish, equip, 5 and maintain a library district, a petition shall be presented to the county auditor of each county 6 in which the territory is situated setting forth the desires and purposes of the landowners; or the 7 board of county commissioners in each county where the library district would be situated may 8 initiate formation of the district by resolution. 9 Section 2. Any municipality located within the area may be included in the library district if 10 twenty-five percent of the landowners within the municipality sign a petition, or if the governing 11 body of the municipality establishes intent by passing a resolution so indicating. 12 Section 3. The petition shall contain the suggested name of the proposed district, the area
- Section 3. The petition shall contain the suggested name of the proposed district, the area in square miles to be included, and a complete description according to government survey, if possible, of the boundaries of the real properties intended to be embraced in the proposed library

- 2 - SB 92

district. The petitioners shall also present to the county auditor a plat or map showing the suggested boundaries of the proposed district and shall deposit with the county auditor a sum sufficient to defray the expenses of publishing the notices required by section 6 of this Act and \$ 6-16-4.

Section 4. Upon the filing of petition in the office of the county auditor, the county auditor shall determine and certify that the petition has been signed by the number of landowners as specified in § 6-16-2. If the petition contains sufficient names, the county auditor shall designate a time and place for the petition or resolution of the county commissioners to be heard by the board of county commissioners.

Section 5. If the proposed district is situated within two or more counties, the county auditor of the county in which the largest area is contained shall confer with the auditors of any other counties concerned and shall obtain a certificate as to the adequacy of the petitions or resolution pertaining to such counties. The auditor shall then designate a time and place for hearing before a joint meeting of the boards of county commissioners of all counties in which the proposed district is to be situated and shall give notice of the hearing by publication in a manner provided in section 6 of this Act.

Section 6. Notice of the hearing shall be given by publication two weeks in the legal newspapers of each county affected. The last publication shall be at least seven days before the hearing and shall include a statement of the proposed boundaries as set forth in the petition.

Section 7. At the time and place so fixed, the county commissioners shall meet, and all persons residing in or owning taxable property within the proposed district may be heard respecting the formation of the district or the location of the boundaries of the district. Thereupon the county commissioners shall determine whether the proposed district is suited to the library service policy of such counties, as a whole; determine the boundaries of the proposed district, whether as suggested in the petition or otherwise; and make a written order of such

- 3 - SB 92

determination which shall describe the boundaries of the district. The written order shall be filed

- 2 in the office of the county auditor of each county in which the district is situated.
- 3 Section 8. Following the filing of the order of the board of county commissioners, an election
- 4 shall be conducted as provided in §§ 6-16-4 to 6-16-6, inclusive.
- 5 Section 9. Permanent organization shall be effected by the election of a board of directors
- 6 consisting of not less than five residents of the district. If the district includes any incorporated
- 7 municipalities that are located within the boundaries of the district, no more than two members
- 8 of a five-member board of directors may be voters who are residents of the incorporated
- 9 municipal areas of the district if at least forty percent of the landowners of the district live outside
- the incorporated areas of the district, and no more than three members of the board of directors
- may be voters who are residents of the incorporated municipal areas of the district if at least
- twenty percent of the landowners of the district live outside the incorporated areas of the district.
- 13 If the board of directors consists of more than five members, the additional members, as nearly
- as can be accomplished, shall be in the proportions set forth in this section.
- 15 Section 10. The board of directors shall meet as soon after the organizational meeting as
- possible to elect a president, a vice-president, and a secretary-treasurer.
- 17 Section 11. All directors and officers shall be elected for two years and hold office until their
- successors have been elected and qualified, except that at the first election the vice-president
- shall be elected as provided in section 10 of this Act for a one-year term, and one-half, or as
- 20 close to one-half as possible depending upon the total number of directors, of the directors
- 21 elected at the first election shall be selected by lot in the presence of a majority of such directors
- 22 to serve one-year terms. A library district director may receive compensation for services in an
- amount not to exceed forty dollars per day and may receive expenses, including traveling
- expenses, necessarily incurred in the discharge of the duties of the office.

25

Section 12. The board of county commissioners shall fill a vacancy on the board of directors

- 4 - SB 92

of a library district by appointing a voter of the district who meets the requirements in section

- 2 9 of this Act to complete the unexpired term.
- 3 Section 13. Upon compliance with the provisions of this chapter relating to organization and
- 4 upon compliance with chapter 6-10, the district under its designated name is a body politic and
- 5 corporate.
- 6 Section 14. The board of directors of a library district has the following general powers:
- 7 (1) To determine upon a general library service program for the district;
- 8 (2) To manage and conduct the business affairs of the district;
- 9 (3) To make and execute contracts in the name of and on behalf of the district;
- 10 (4) To purchase or lease such library equipment, supplies, and other real or personal
- property as are necessary and proper to carry out the library service program of the
- 12 district;
- 13 (5) To incur indebtedness on behalf of the district within the limits prescribed by section
- 14 21 of this Act, and to authorize the issuance of evidences of such indebtedness
- permitted under this subdivision, and to pledge any real or personal property owned
- or acquired by the district as security for the indebtedness;
- 17 (6) To organize, establish, equip, maintain, and supervise library service to the district;
- 18 and
- 19 (7) To perform all acts necessary to fully carry out the purposes of this Act.
- Section 15. Any library district may elect to enter into a contract with another library district
- 21 to consolidate or cooperate for mutual service, or may enter into a contract with any federal,
- state, or local government agency for library service upon suitable terms.
- 23 Section 16. The board of directors of a library district may:
- 24 (1) Make an annual estimate of the probable expense for carrying out the library service
- 25 program for the district; and

- 5 - SB 92

1 (2) Annually certify the estimate to the proper county auditor in the manner provided by section 17 of this Act.

Section 17. The estimate provided by section 16 of this Act shall be certified by the president and secretary to the proper county auditors, on or before June thirtieth of each year, who shall levy a tax not to exceed one dollar per thousand dollars of taxable valuation of the property within the district for the maintenance of the library district for the fiscal year as provided by law.

Section 18. In no case may the amount of tax levy exceed the amount of funds required to defray the expenses of the district for a period of one year as embraced in the annual estimate of expenses including the amount of principal and interest upon the indebtedness of the district for the ensuing year. However, any district organized pursuant to this chapter is not subject to any general county levy for library service.

Section 19. The tax shall be collected as other taxes are collected in the county.

Section 20. The tax revenue shall be deposited with the secretary-treasurer of the library district, who shall have a surety bond in the amount of at least five thousand dollars.

Section 21. No district may become indebted for an amount that is not payable from twenty annual maximum tax levies as authorized by section 17 of this Act. Within the limits authorized in this section, the district may borrow money at a rate not in excess of twelve percent and may issue appropriate evidence of indebtedness.

Section 22. All funds collected on behalf of the district through the levy of taxes; all donations, contributions, service fees, bequests, or annuities; and all borrowed money received by or on behalf of the district shall be deposited in a state or national bank to the credit of the district fund and may be drawn out only by warrant.

Section 23. All claim vouchers shall be authorized by the board of directors and shall bear the signature of the treasurer and the countersignature of the president of the district.

Section 24. If the Department of Legislative Audit examines other county records, it shall

- 6 - SB 92

1 examine the financial report of the secretary-treasurer of the library district. The

secretary-treasurer of the library district shall, on or before January thirty-first of each year, file

- a financial report of the previous calendar year with the appropriate county auditor.
- 4 Section 25. The boundaries of any library district organized under the provisions of this Act
- 5 may be changed in the manner prescribed by sections 4 to 8, inclusive, of this Act. However,
- 6 the change of boundaries of a district may not impair or affect the district's organization or right
- 7 in or to property; nor may any boundary change impair, affect, or discharge any contract,
- 8 obligation, lien, or charge for or upon which the district may be liable had the change of
- 9 boundaries not been made. Any portion or area of land that was part of a library district,
- organized under sections 4 to 8, inclusive, of this Act, and which is annexed into a bordering
- municipality, is liable for any indebtedness incurred while within the boundaries of the library
- district. Nothing in this section precludes a municipality, by ordinance, if annexing land within
- a library district, from assuming a portion or all of the indebtedness on the annexed land which
- is a result of being in the library district.
- 15 Section 26. A regular meeting of the landowners of a district shall be held in the first quarter
- of each calendar year, and special meetings may be called by the board of directors at any time.
- Notice of the meeting shall be given by the secretary-treasurer by one publication in a legal
- 18 newspaper of general circulation in each county in which the district is situated. The meeting
- shall be held not less than seven days nor more than fourteen days after the date of publication
- of the notice.

2

3

- Section 27. The secretary-treasurer of the district shall, at each annual public meeting of the
- 22 district, present a financial report concerning the affairs of the district.
- Section 28. The capital outlay fund of a library district is a fund intended to meet
- 24 expenditures of three hundred dollars or more that result in the acquisition of or additions to real
- 25 property, plant, or equipment. Such an expenditure may be for land, existing facilities,

- 7 - SB 92

1 improvement of grounds, construction of facilities, additions to facilities, remodeling of facilities,

- 2 or for the purchase of equipment.
- 3 Section 29. In addition to any tax levy authorized pursuant to sections 17 and 18 of this Act,
- 4 the board of directors of a library district may authorize an annual levy of a tax not to exceed
- 5 fifty cents per thousand dollars of taxable valuation on the taxable valuation of the district for
- 6 the capital outlay fund.
- 7 Section 30. Any library district using the capital outlay fund for payment of construction of
- 8 new facilities or construction of additions to facilities, the total of which will require advertising
- 9 for bids under chapter 5-18, shall have a public hearing at least ten days before the advertisement
- of any contract specifications. The public hearing shall be advertised in the legal newspapers of
- each county where the district has territory. Following the public hearing and approval by the
- board of directors, the district may use the capital outlay fund as provided in sections 28 and 29
- of this Act. However, if a district changes the originally advertised use of the fund, it shall hold
- 14 another public hearing.
- 15 Section 31. That § 6-16-1 be amended to read as follows:
- 6-16-1. Sections 6-16-1 to 6-16-7, inclusive, apply to elections for the formation of certain
- special districts and for the initial election of the board of directors or trustees for these districts.
- 18 The special districts covered are: county road, ambulance, rural fire protection, library, sanitary,
- 19 irrigation, watershed, and water project districts.

- 8 - SB 92

1 **BILL HISTORY**

- 2 1/21/99 First read in Senate and referred to Local Government. S.J. 147
- 3 1/27/99 Scheduled for Committee hearing on this date.
- 4 1/27/99 Local Government Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 208

State of South Dakota

SEVENTY-FOURTH SESSION LEGISLATIVE ASSEMBLY, 1999

491C0496

SENATE TAXATION COMMITTEE ENGROSSED NO. SB111 - 1/28/99

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.

Introduced by: Senators Paisley and Everist and Representatives Koskan, Diedrich (Larry), and Wilson

- 1 FOR AN ACT ENTITLED, An Act to establish certain provisions regarding the taxation of the
- 2 gross receipts of a professional employer organization.
- 3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
- 4 Section 1. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
- 5 follows:
- For the purposes of chapter 10-45, gross receipts of a professional employer organization
- 7 includes only those amounts received as administrative fees from a client company, whether on
- 8 a fee-for-service basis or as a percentage of total receipts from the client company. The gross
- 9 receipts do not include any other amount paid by the client company to the professional employer
- 10 organization for the benefit of any employee, including wages, salaries, payroll taxes, payroll
- deductions, workers compensation costs, insurance premiums, welfare benefits, and retirement
- benefits.
- Section 2. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
- 14 follows:
- For the purposes of section 1 of this Act, the term, professional employer organization,

- 2 - SB 111

1			C*	1			
	means	Ω	tirm	117h	10	h	٠
	HIICAHS	а	111111	wı		11.	

- 2 (1) Creates a co-employer relationship with the employees of a client company by
- 3 assuming responsibility for payroll, benefits, and other human resources functions;
- 4 (2) Covers at least seventy-five percent of the client company's full-time or full-time
- 5 equivalent employees; and
- 6 (3) Maintains separate books and records of account for each client company.
- 7 Section 3. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
- 8 follows:
- 9 The provisions of this Act do not apply to the providing of temporary help services or to any
- 10 other arrangement whereby a firm temporarily assigns employees of the firm to support or
- supplement a client company's regular work force in special situations such as employee
- 12 absences, temporary skill shortages, seasonal workloads and special assignments, or projects.

- 3 - SB 111

1 **BILL HISTORY**

- 2 1/22/99 First read in Senate and referred to Taxation. S.J. 162
- 3 1/27/99 Scheduled for Committee hearing on this date.
- 4 1/27/99 Taxation Do Pass Amended, Passed, AYES 9, NAYS 0. S.J. 209

State of South Dakota

SEVENTY-FOURTH SESSION LEGISLATIVE ASSEMBLY, 1999

543C0628

SENATE JUDICIARY COMMITTEE ENGROSSED NO. SB126 - 1/28/99

Introduced by: Senators Lawler, Dennert, Hainje, and Munson (David) and Representatives Cutler, Diedtrich (Elmer), Fischer-Clemens, Hennies, Sutton (Duane), and Waltman

- 1 FOR AN ACT ENTITLED, An Act to provide for the confidentiality of certain ambulance
- 2 patient information.
- 3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
- 4 Section 1. That chapter 34-11 be amended by adding thereto a NEW SECTION to read as
- 5 follows:
- Any patient information received by an ambulance service under the authority of this chapter
- 7 is not a public record and is confidential, except for official purposes, and may not be published
- 8 or disclosed.

- 2 - SB 126

1 **BILL HISTORY**

- 2 1/25/99 First read in Senate and referred to Judiciary. S.J. 178
- 3 1/27/99 Scheduled for Committee hearing on this date.
- 4 1/27/99 Judiciary Do Pass Amended, Passed, AYES 5, NAYS 2. S.J. 209

State of South Dakota

SEVENTY-FOURTH SESSION LEGISLATIVE ASSEMBLY, 1999

880C0473

SENATE JUDICIARY COMMITTEE ENGROSSED NO. SB128 - 1/28/99

Introduced by: Senators Vitter, Albers, Ham, and Madden and Representatives Hennies, Duniphan, Jaspers, and Lintz

1 FOR AN ACT ENTITLED, An Act to criminalize the possession of certain contraband in 2 juvenile correctional facilities and the delivery of certain contraband to juvenile correctional 3 facilities. 4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA: 5 Section 1. That § 24-11-47 be amended to read as follows: 6 24-11-47. No alcoholic beverages, controlled substances as defined by chapter 34-20B, 7 hallucinogens, marijuana, or weapons as defined in subdivision 22-1-2(10), may be possessed by 8 any inmate of a jail or juvenile in a juvenile correctional facility. No prescription or 9 nonprescription drugs may be possessed by any inmate of a jail or juvenile in a juvenile 10 correctional facility except by order of a physician. Such order shall be in writing and for a 11 definite period. A violation of this section constitutes a felony pursuant to the following 12 schedule: 13 (1) Possession of alcoholic beverages or marijuana is a Class 6 felony;

750 copies of this document were printed by the South Dakota Legislative Research Council at a cost of \$.016 per page.

hallucinogens is a Class 4 felony;

14

15

16

(2)

(3)

Possession of prescription or nonprescription drugs, controlled substances or

Possession of a weapon as defined in subdivision 22-1-2(10) is a Class 2 felony.

- 2 - SB 128

- 1 Section 2. That § 24-11-48 be amended to read as follows:
- 2 24-11-48. No employee or other person may deliver or procure to be delivered, or have in
- 3 such person's possession with intent to deliver, to any inmate in a jail or juvenile in any juvenile
- 4 <u>correctional facility</u>, or deposit or conceal in or around any jail <u>or in or around a juvenile</u>
- 5 <u>correctional facility</u>, or in any mode of transport entering the grounds of any jail <u>or iuvenile</u>
- 6 <u>correctional facility</u> and its ancillary facilities used to house inmates <u>or juveniles</u>, any article or
- 7 thing contrary to § 24-11-47 with intent that any inmate <u>or iuvenile</u> obtain or receive the same.
- 8 A violation of this section is a Class 6 felony.
- 9 Section 3. That chapter 24-11 be amended by adding thereto a NEW SECTION to read as
- 10 follows:
- A juvenile correctional facility pursuant to this Act is a juvenile detention facility as defined
- in subdivision 26-7A-1(16) or a juvenile facility operated by the Department of Corrections
- 13 under § 1-15-1.4.

- 3 - SB 128

1 **BILL HISTORY**

- 2 1/25/99 First read in Senate and referred to Judiciary. S.J. 179
- 3 1/27/99 Scheduled for Committee hearing on this date.
- 4 1/27/99 Judiciary Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 209